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United States Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES FIDELITY)
AND GUARANTY COMPANY,)
Plaintiff,) Nos. CV-04-29-BLG-RFC
and) CV-08-29-BLG-RFC
THE CONTINENTAL INSURANCE)
COMPANY,)
Plaintiff Intervenor,)
vs.)
SOCO WEST, INC.,)
Defendant.)
)

BEFORE THE HONORABLE RICHARD F. CEBULL
CHIEF UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF MONTANA

James F. Battin United States Courthouse
316 North 26th Street
Billings, Montana 59101
Tuesday, March 9, 2010
08:25:15 to 16:47:05

Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

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graphics display:
MS. JULIANNE ROHM
MR. NEIL BAILEY

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24 REPORTER'S NOTE: "Uh-huh" and "Um-hmm" indicate
25 affirmative responses. "Huh-uh" and "Hm-umm" indicate
 negative responses.

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4	30	09/11/85 Memo to Managers of All Plants from Q. Dyce	FPT/ 56
5	72	11/04/75 Daily sales report to Bender, Hallsten, Don, Grady, and Naff from Q. Dyce.	2/ 536
6	90	05/29/86 Sales report	3/ 697
8	143	02/26/82 Continental General Liability Survey Report form	FPT/ 23
9	231	06/15/00 Letter to USF&G from Whalen	FPT/ 24
10	234	09/25/00 Letter to Downing from Mielenhausen	FPT/ 24
12	352	04/08/74 Memo to Bender from Whaley	FPT/ 28
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14	359	09/11/85 Memo from Q. Dyce	FPT/ 28
15	362	09/13/89 Memo to Q. Dyce from Naff	FPT/ 28, 57
16	366	Warning label for perchloroethylene and instructions on empty container handling and reuse	FPT/ 57
18	382	11/05/92 Montana Department of Health Field Investigation Report	4/ 975
19	383	07/23/00 Letter to Rowe from Miller	FPT/ 29
21	429	06/09/98 E-mail between Warne and Naff	3/ 668
22	433	12/16/99 Letter to G. Staarjes from USEPA ..	FPT/ 58
23	436	01/06/99 E-mail between Miller and Warne ..	FPT/ 58
24	442	08/06/96-08/09/00 Containment pit runoff water sampling	4/ 1059
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499	11/04/75 Aerial photograph	FPT/ 31
505	02/23/82 Continental General Liability Survey Report	FPT/ 31
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785	08/18/95 Memo to Naff, Hilton, Biondo, Gilbert, Akers and Liebling from Simko	FPT/ 58
856A	09/25/89 Versar Inc. Environmental Risk Assessment Survey	FPT/ 32, 58
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2532	11/1975 Aerial photograph	FPT/ 32
2533	11/04/75 Aerial photograph	FPT/ 32
2545	12/30/05 Bulk Handling and Properties of PPG Chlorinated Solvents: Perchloroethylene, Trichloroethylene, Tri-Ethane	FPT/ 59
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3017	01/1983 Dyce personnel manual	FPT/ 33
3024	10/29/85 Company policy re: hoses	4/ 888
3025	07/02/87 Memo to Dick, Russ, Bob, Kevin, Ivan, John and File from Roger	FPT/ 36
3029	1986-2001 Dyce manager's monthly report	8/ 1896
3043	11/29/99 Lockheed Martin Final Report	1/ 37

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3044 12/16/99 USEPA First Request for Information Pursuant to 104(e)	FPT/ 37
3045 03/01/00 Dyce Response to First 104(e) Request	FPT/ 37
3047 08/23/00 Letter to Naff from Risner & Kercher	FPT/ 37
3048 08/23/00 Dyce Supplemental Response to USEPA's Second 104(e) Request	FPT/ 37
3049 10/03/00 Maxim Technologies Inc. Site Investigation Report	FPT/ 38
3050 06/2003 Tetra Tech EM Inc. Remedial Investigation Report for MDEQ	FPT/ 39
3051 07/07/04 Tetra Tech Final Feasibility Study Report for MDEQ	FPT/ 39
3052 11/2004 MDEQ/USEPA Proposed Remedial Action Plan for Lockwood Groundwater Solvent Plume Site	FPT/ 39
3058 12/2003 Tetra Tech Addendum 01 to the Final Remedial Investigation Report for MDEQ	FPT/ 39
3059 08/2005 MDEQ/USEPA Record of Decision for Lockwood Solvent Groundwater Plume Site	FPT/ 39
3060 02/28/06 Letter to Terp from Risner & Kercher	FPT/ 40
3102 09/16/85 Memo to Colver	FPT/ 41
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3201	Compilation: USF&G Policy No. 1CC599480 ...	FPT/ 44
3202	Compilation: USF&G Policy No. SMP406309 ...	FPT/ 44
3203	Compilation: USF&G Policy No. 1CC944574 ...	FPT/ 44
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3205	Compilation: USF&G Policy No. 1CC945882 ...	FPT/ 44
3206	Compilation: USF&G Policy No. CEP64348	FPT/ 44
3207	Compilation: USF&G Policy No. SMP535107 ...	FPT/ 44
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3407	1971 Chemical Safety Data Sheet for perchloroethylene	FPT/ 49, 61
3408	1972 Hooker Chemical MSDS for trichloroethylene	FPT/ 49
3410	1980 PPG manual	FPT/ 50
3420	05/25/00 Second Request for Information Pursuant to Section 104 of CERCLA for the Lockwood Solvent Site Billings	3/ 676
3433	1983 Dyce brochure	FPT/ 50
3436	11/1979 Ledger sheet	3/ 622
3438	04/1971 Perchloroethylene brochure	FPT/ 50, 61
3471	08/05/85 Sales report	3/ 591
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3476	06/02/79 Expense Report	3/ 585
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3800	05/27/57 Aerial photograph	FPT/ 52
3801	06/26/66 Aerial photograph	FPT/ 52
3802	05/22/69 Aerial photograph	FPT/ 52
3803	08/18/71 Aerial photograph	FPT/ 52
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3807	11/04/75 Aerial photograph	FPT/ 52
3808	06/23/77 Aerial photograph	FPT/ 52
3809	09/06/77 Aerial photograph	FPT/ 52
3810	05/03/79 Aerial photograph	FPT/ 52
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3813	03/13/81 Aerial photograph	FPT/ 52
3814	06/02/81 Aerial photograph	FPT/ 52
3815	08/24/81 Aerial photograph	FPT/ 52
3816	05/27/83 Aerial photograph	FPT/ 52
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3828	02/15/05 Letter to Walsh from Mielenhausen .	FPT/ 53
3886	06/15/00 Letter to Continental from Whalen .	FPT/ 55
3887	09/25/00 Letter to Giblin from Mielenhausen.	FPT/ 55
3888	01/08/07 Second stipulation as to existence and content of USF&G insurance policies	FPT/ 55
4027	Aerial photograph (D032604)	4/ 848
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4039	09/13/89 Memo to Q. Dyce from Hallsten	8/ 1903
4044	07/1976 Location Survey of Dyce site	FPT/ 62
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4089	02/29/00 E-mail to Naff from Warne	4/ 1066
4143	Aerial photograph	6/ 1485
4320	1980 Bulk Handling and Properties of PPG Chlorinated Solvents	FPT/ 63
4400	01/14/05 Fax to LeCours from Sullivan	2/ 335
4516	09/12/02 Letter to EPA from Sullivan	2/ 354
4721	08/18/03 Fax to MDEQ from Sullivan	2/ 308
4757	08/03/04 Letter to Sullivan from MDEQ	2/ 313
4811	04/28/03 Letter to Ross from Sullivan	2/ 342
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1 PROCEEDINGS

2 (Open court.)

3 (Jury not present.)

4 THE COURT: Please be seated.

5 MR. JOHNSON: Your Honor, a couple of housekeeping
6 matters, if that's okay?

7 THE COURT: Shoot. That's why I'm here. I'm here
8 for you.

9 MR. JOHNSON: Appreciate it.

10 There's a debate between us as to whether Exhibits
11 5000 to 5064 are actually in evidence. They're the historical
12 photos that we both agreed on, and we're both using them, and
13 we want to make sure that they've been admitted. I say that
14 on the record.

15 THE CLERK: I don't have a list that shows them.

16 THE COURT: What numbers are they?

17 MR. JOHNSON: 5000 to 5064.

18 THE COURT: 5000 to 5064. Are there 64 of them?

19 MR. JOHNSON: I believe that there are.

20 THE COURT: They're admitted without objection.

21 (Exhibits 5000 through 5064 were received in evidence.)

22 MS. ENERSON: There are a few of them missing.

23 MR. JOHNSON: There are a few of them missing, Your
24 Honor.

25 THE COURT: They're admitted without objection.

1 MR. JOHNSON: Secondly, I noted that Mr. St. George
2 mentioned yesterday while testifying that he had -- he
3 mentioned that he testified at the prior trial, which violates
4 the agreement that we had that we would tell our witnesses not
5 to mention the prior trial. They can mention they testified
6 in this case but not at a particular trial. So I guess I
7 would just say that we should both be forewarned about that.

8 THE COURT: Yeah. Let's keep that out of this
9 trial.

10 MR. JOHNSON: Thank you, Your Honor.

11 THE COURT: We don't want to have that as a basis to
12 have to do it again, do we?

13 MR. LYNCH: We do not, Your Honor.

14 MR. JOHNSON: No.

15 THE COURT: Yeah. Try and do better.

16 MR. BANKER: A couple of housekeeping issues from
17 Soco's perspective.

18 Last night we saw on the ECF system Docket Entry 497
19 which was a record of our pretrial status conference
20 yesterday, and at the end of that entry, it said that the
21 Court had denied Soco's motion on the duty to defend and
22 referenced Docket No. 454.

23 I wondered whether that was an error based on our
24 discussion, because to my recollection the only motion that
25 the Court ruled on was the Lockheed Martin report which was

1 Docket No. 479.

2 THE CLERK: Okay. I'll correct it.

3 THE COURT: There are occasions when I delegate the
4 rulings on these motions to the court reporter.

5 Just kidding. Just kidding.

6 THE CLERK: I'll correct it.

7 THE COURT: Yeah. And to the deputy clerk of court.
8 I'm sorry.

9 Cheri just told me that she would reverse herself.

10 MR. DAVIS: Well, she doesn't have to grant the
11 motion. It's just it was deferred. I think I mentioned that
12 I wanted to have a couple minutes of argument on it, and you
13 recognized that there was no hurry.

14 THE COURT: I did not, I did not rule on it. And,
15 you know, that kind of thing you don't need to worry about.
16 Before the clerk rules, she's going to talk to me, I'm sure.

17 THE CLERK: Thank you.

18 THE COURT: If it's a binding ruling.

19 Now we have a problem. It's a problem that's easy
20 for me to solve. The gentleman that was in the back row that
21 raised his hand that I thought wanted to ask a question, Cheri
22 has told me that when we were bringing in the jury later in
23 the afternoon during a recess, or after a recess, the reason
24 we had to wait is he had to run back to the bathroom and
25 vomit. Apparently he's in the hotel room sick, and he can't

1 leave, right?

2 THE CLERK: Yes.

3 THE COURT: Under Rule 47, I can excuse a juror for
4 just cause.

5 Cheri, for the record, did he call you this morning?

6 THE CLERK: Yes, he did.

7 THE COURT: Tell counsel what he told you.

8 THE CLERK: He told me he had been sick all night
9 and that he really couldn't come in, but he would try to
10 later. And he, he said, "I realize you can't go on without me
11 because you don't have an alternate," but he -- I told him not
12 to worry about it, I would call him back and tell him the
13 status.

14 THE COURT: Well, let's discuss it, but my
15 inclination is, under Rule 47, to excuse him for just cause,
16 and I am hopeful that his presence yesterday isn't going to
17 cause other jurors to become sick. I'm willing to listen to
18 alternatives.

19 MR. COZZENS: We have no objection to excusing him.

20 MR. JOHNSON: Can we discuss it, Your Honor, for a
21 second?

22 THE COURT: Yeah.

23 (Discussion off the record at counsel table.)

24 THE COURT: While you're discussing, keep in mind
25 that the options are limited.

1 (Discussion off the record at counsel table.)

2 MR. DAVIS: When did you speak with him, Cheri?

3 THE CLERK: It was about 40 minutes ago.

4 MR. DAVIS: I guess we hate to lose the juror. I
5 don't know if it's worth a second call to see if he's feeling
6 any better, and I understand that certainly if it may be
7 contagious or something, we'd lose more.

8 MR. JOHNSON: I wonder if we could take the morning
9 off, Your Honor, just to see if he gets better. We hate to
10 lose the juror.

11 THE COURT: I can't afford to take the morning off.
12 I told you when this case has to be done, and, the way it
13 started, it's going to be pushing it.

14 This case basically is whether there was a sudden
15 and accidental spill of perc during '75, '76, '77, I guess the
16 early part of '78. Pretty much that's the issue in the case.
17 Now I know there's an issue of notice. I don't think the
18 notice issue is near as serious as the insurers do, but that's
19 just me talking now. But basically what else are we talking
20 about?

21 MR. BANKER: There is another housekeeping issue
22 that Soco would like to talk about and at least have a
23 conversation about this morning before we call witnesses, and
24 here is my concern.

25 THE COURT: Well, either stand up or lean into the

1 microphone.

2 MR. BANKER: Sure.

3 The concern that Soco has and what I would call this
4 is a motion *in limine*. We heard yesterday in opening argument
5 a lot of talk about Mr. Mielenhausen and a changing story, and
6 this case isn't about Mr. Mielenhausen. Mr. Mielenhausen
7 isn't going to be a witness in this case. I think -- you
8 know, Soco moves under 402, 403, to limit really very
9 carefully any reference to Mr. Mielenhausen.

10 Today we're going to have Mr. Hallsten testify on
11 the stand under oath, and he will unequivocally say this is
12 his recollection. They're entitled to cross-examine him about
13 that. If they want to suggest, you know, ask him if he's
14 lying, they can do that. If they want to argue in closing and
15 tell the jury they think he's lying, they're entitled to do
16 that. And if they go the next step -- and they didn't say it
17 yesterday, but I heard clear innuendo their suggestion that
18 Mr. Mielenhausen is suborning perjury.

19 THE COURT: Well, I don't -- I'm going to stop you.
20 I remember the last trial. The same thing happened the last
21 trial, and I think the point of the insurers during that part
22 of the cross-examination was, as I recall, he didn't have any
23 recollection of this until after he'd talked with
24 Mr. Mielenhausen. Isn't that what --

25 MR. GROSSBART: That is exactly correct, and it did

1 come up at the first trial.

2 THE COURT: Yeah, I don't think it's a suggestion of
3 them, them asserting some kind of a claim that
4 Mr. Mielenhausen suborned perjury. It's just they're entitled
5 to bring out when his memory was when it came to fruition.

6 MR. BANKER: Yeah, I don't disagree with that. They
7 are entitled to inquire when he first told anyone, when he had
8 that recollection, but I think we need to be cautious of going
9 that next step. And what I heard yesterday and then what I
10 saw in cross-examination of Mr. Johnson's exam of
11 Mr. St. George was, again, this Mr. Mielenhausen thing.

12 I guess, as to that, all I'd ask is I'd want to
13 alert the Court that this is an issue that we're concerned
14 about and say that if they are going to make that argument,
15 then I think that we need to have an offer of proof, and I
16 think we need to *voir dire* the witness outside the presence --

17 THE COURT: If they're going to make what argument?

18 MR. BANKER: That there's some subornation of
19 perjury here.

20 THE COURT: I don't remember that ever occurring
21 during the last trial. I don't want to hear it this trial.

22 MR. GROSSBART: It didn't happen in the last trial.

23 THE COURT: No.

24 MR. GROSSBART: We've not accused him of that.

25 THE COURT: No.

1 MR. GROSSBART: Had we done that, it would not be
2 hard to figure out. We haven't done that.

3 THE COURT: No. I don't recall that even being an
4 issue in the last trial. On cross-examination, it's fair game
5 to talk to somebody about when their first recollection of an
6 event was and how it came about.

7 MR. BANKER: There is no disagreement about that. I
8 just --

9 THE COURT: And if Mr. Mielenhausen happened to be
10 there, too bad.

11 MR. BANKER: There's no disagreement about that. I
12 just --

13 THE COURT: That's good.

14 MR. BANKER: -- there's a line that I think we need
15 to adhere to.

16 THE COURT: We don't want to be looking for
17 boogeymen under every rock.

18 MR. BANKER: That's Soco's concern, Your Honor.

19 THE COURT: Okay. Well, we need to see if we have
20 the jury here.

21 THE CLERK: (Complied with request.)

22 MR. DAVIS: So I take it that you're going to
23 proceed right now and dismiss the other juror?

24 THE COURT: Oh. Come back here.

25 THE CLERK: (Complied with request.)

1 THE COURT: That's right.

2 Yeah, under Rule 47(c), I'm going to find just cause
3 that Mr. Hartman is sick. Obviously he's sick. He can't show
4 up. I can't afford to burn the morning. And we'll have seven
5 jurors left. Under the rules, we're only required to have
6 six, so we'll keep our fingers crossed that no one else has a
7 problem.

8 Go in and check.

9 THE CLERK: Okay.

10 THE COURT: And I'll tell you what. Let's take a
11 quick recess. You check, and then you call, you call
12 Mr. Hartman and tell him what I've done and tell him thanks.

13 THE CLERK: Okay.

14 THE LAW CLERK: All rise.

15 (Recess taken from 08:37:23 to 08:46:33.)

16 (Open court.)

17 (Jury present.)

18 THE COURT: Please be seated.

19 Now, ladies and gentlemen, as you can tell, you are
20 one fewer in number. Mr. Hartman apparently, when he was
21 raising his hand, was trying to tell me he was sick, and so I
22 have excused Mr. Hartman from the jury, so this jury now will
23 consist of you seven.

24 You may proceed.

25 MR. LYNCH: Soco calls James Sullivan to the stand.

1 THE COURT: You can proceed. I already had the
2 witness summary. Go ahead.

3 WHEREUPON,

4 MR. JAMES SULLIVAN,

5 called for examination by counsel for defendant, after having
6 been first duly sworn to testify the truth, the whole truth,
7 and nothing but the truth, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LYNCH:

10 Q Good morning, Mr. Sullivan.

11 A Good morning.

12 Q How are you today?

13 A Fine, thank you.

14 Q Mr. Sullivan, do you live here in Billings?

15 A Yes, I do.

16 Q Are you originally from here?

17 A Yes.

18 Q Lived here your whole life?

19 A Except to go to school.

20 Q Where did you go to school?

21 A At Montana Tech in Butte.

22 Q Okay. And where do you work?

23 A At ATC Associates here in town.

24 Q What is ATC Associates?

25 A It's an environmental consulting company.

1 Q And what generally does an environmental consulting
2 company do?

3 A Our primary focus is soil and groundwater cleanup.

4 Q And what's your position at ATC?

5 A I'm a regional manager.

6 Q What's a regional manager do?

7 A I manage staff in Montana and Wyoming.

8 Q Are you also an environmental engineer?

9 A Yes.

10 Q Is most of the work that you do here in the Billings
11 area?

12 A Montana and Wyoming. A lot in Billings.

13 Q Are you familiar with the Lockwood solvent groundwater
14 plume site?

15 A Yes.

16 Q Have you done any work in connection with that Lockwood
17 solvent site?

18 A Yes.

19 Q As an environmental engineer?

20 A Yes.

21 Q In your position at ATC?

22 A And at Secor.

23 Q And what is Secor?

24 A Secor was the previous consulting company that I was at
25 until March of 2003. Same position. Same staff. Same work

1 on the project.

2 Q Okay. So eventually you left Secor and went to ATC?

3 A That's correct.

4 Q And I take it the work that you were doing in connection
5 with the Lockwood solvent site followed you there?

6 A That's correct.

7 Q Who hired you to do that work in connection with the
8 Lockwood solvent site?

9 A The Brown Law Firm.

10 Q Okay. And they're a firm here in Billings?

11 A Yes.

12 Q Was it on behalf of a particular client of theirs?

13 A Yes. Brenntag.

14 Q Do you understand that Brenntag has since changed its
15 name to Soco West?

16 A Yes.

17 Q So I might refer to them as -- I'll try to be consistent.
18 I'll try to refer to them as Soco.

19 A Okay.

20 Q And they're the entity that had purchased the old Dyce
21 Chemical site in Lockwood; is that correct?

22 A Yes.

23 Q When were you hired by the Brown firm?

24 A July of 2001.

25 Q Have you, in connection with your work, have you

1 personally been out to the Dyce Chemical property in Lockwood?

2 A Many times.

3 Q And in connection with that work, have you taken soil or
4 groundwater samples from that property?

5 A Yes.

6 Q Are you still working on behalf of Soco in connection
7 with the Lockwood solvent site and the Dyce Chemical property?

8 A Yes.

9 Q What are your current responsibilities?

10 A We're working with EPA and MDEQ to facilitate the
11 cleanup, and we're also running a remediation system.

12 Q Do you have any involvement in this insurance coverage
13 case?

14 A No.

15 Q Have you done anything in connection with this case?

16 A I've produced documents. I took expert witnesses from
17 both the insurance company and Soco on tours of the site.

18 Q Have you been retained as an expert witness in this case?

19 A No.

20 Q Have you been asked to give any scientific opinions in
21 connection with this case?

22 A No.

23 Q Are you being compensated for your time here today?

24 A Yes.

25 Q And what's the rate?

1 A \$125 an hour.

2 Q Now is that the same rate that you would get if you were
3 back at your office instead of having to be here with us
4 today?

5 A It's the same rate my company would get, not me.

6 THE COURT: Do you want me to make them take a
7 breath, JoAnn?

8 THE REPORTER: I think we're okay.

9 THE COURT: Okay.

10 MR. LYNCH: I'll try and slow down.

11 THE COURT: Yeah.

12 BY MR. LYNCH:

13 Q Mr. Sullivan, when you were hired by the Brown firm in
14 July of 2001, had the EPA already identified the Dyce
15 Chemical -- Soco as a potential responsible party for the
16 cleanup at the Lockwood solvent site?

17 A Yes.

18 Q As of July 2001, had Soco conducted any sampling on the
19 Dyce Chemical property?

20 A Yes, they had.

21 Q And who had conducted that sampling?

22 A Another consulting company called Maxim.

23 MR. LYNCH: Can you please pull up, Julianne,
24 Admitted Exhibit 3049?

25 DOCUMENT TECHNICIAN: (Complied with request.)

1 BY MR. LYNCH:

2 Q Mr. Sullivan, do you recognize that document?

3 A Yes.

4 Q And what is it?

5 A That looks like the cover sheet from the Maxim report.

6 MR. LYNCH: And if you'd go to page 2 of that
7 exhibit, please, Julianne?

8 DOCUMENT TECHNICIAN: (Complied with request.)

9 BY MR. LYNCH:

10 Q The date on this report, Mr. Sullivan, is October 3,
11 2000; is that correct?

12 A Yes.

13 Q Is this a report that you reviewed when you first were
14 hired by the Brown firm?

15 A Yes.

16 Q And at that time, as of July 2001, was it the most
17 current sampling that had been done at the Dyce Chemical
18 property?

19 A It was.

20 Q Did Maxim find contamination on the Dyce Chemical
21 property?

22 MR. GROSSBART: Objection, Your Honor. If he wants
23 to publish the report, that's fine, but now he's asking the
24 witness to interpret it.

25 THE COURT: Well, I'm going to overrule it.

1 Go ahead.

2 THE WITNESS: It did.

3 MR. LYNCH: And, Julianne, if you could please pull
4 up page 23 of that report?

5 DOCUMENT TECHNICIAN: (Complied with request.)

6 BY MR. LYNCH:

7 Q Mr. Sullivan, this is a figure from the Maxim report,
8 page 23. Is that a figure depicting the locations where Maxim
9 had sampled on the Dyce Chemical property?

10 A Yes, it is.

11 Q Was Maxim still working -- you can take it off, Julianne.

12 DOCUMENT TECHNICIAN: (Complied with request.)

13 BY MR. LYNCH:

14 Q Was Maxim still working for Soco when ATC was hired?

15 A No, I don't believe they were.

16 Q Do you know why not?

17 A Between the time they did the work and the time we were
18 hired, the site was named to the national priorities list, the
19 Superfund site, and I believe they were conflicted out.

20 Q What was ATC hired to do?

21 A We were hired, kind of a two-pronged approach. We were
22 hired to review environmental documents and identify potential
23 sources on the Lockwood solvent site as a whole, and we were
24 also hired to review environmental documents, identify
25 potential sources, and propose and conduct remediation at the

1 Dyce facility.

2 Q I'd like to discuss a little bit your remediation efforts
3 on the Dyce Chemical facility.

4 First of all, what is remediation?

5 A It's cleanup of soil or groundwater or both.

6 Q And was ATC hired to develop a plan to clean up the
7 entire 580-acre Lockwood solvent site?

8 A No. Just the Dyce facility.

9 Q Did you ever work on a plan to clean up areas expanding
10 beyond the Dyce facility?

11 A No.

12 Q Did you ever, ATC, on behalf of Soco West, ever offer to
13 conduct a broader remedial investigation of the site?

14 A Yes, yes.

15 Q And was that offer accepted?

16 A No. We offered several times, and it was denied by EPA
17 and MDEQ.

18 Q Who actually conducted the remedial investigation of the
19 Lockwood site?

20 A A company called Tetra Tech.

21 Q And were they working on behalf of MDEQ?

22 A Yes.

23 Q Did ATC nevertheless continue to develop a plan to clean
24 up the contamination that had been found at the Dyce Chemical
25 property itself?

1 A Yes.

2 Q And did you start putting that plan into place in 2001
3 when you were first hired?

4 A Yes. We put together a work plan and put in some
5 monitoring wells.

6 Q Okay. And just can you generally elaborate on what did
7 you do first?

8 A We produced a work plan.

9 MR. GROSSBART: Your Honor, can we approach? This
10 is totally irrelevant. I can explain at sidebar.

11 THE COURT: Let's have a little sidebar.

12 (Discussion on the record at sidebar.)

13 MR. GROSSBART: As you said in your remarks, this
14 case is about a single and accidental spill. They're going to
15 have this man go through his remediation efforts over the
16 course of years. It is necessarily going to put him in the
17 role of an expert witness. Here is his report of the
18 remediation, at least the last one we have. I can't
19 cross-examine him about that without getting into all of the
20 expert types of things that he's not on the witness stand to
21 say, so he's going to say, "Yeah, I did this report, and I did
22 this remediation." He's going to give the bottom-line
23 conclusion.

24 THE COURT: What's the bottom-line conclusion? What
25 is it?

1 MR. LYNCH: He's going to testify, Your Honor, that
2 he did conduct remediation efforts on the site from 2001
3 through the present and just basically explain what types of
4 things he did.

5 THE COURT: Why?

6 MR. LYNCH: Because this goes to refute their
7 argument yesterday -- we heard it in opening and we heard it
8 with Mr. St. George -- that Dyce was not assuming
9 responsibility for the contamination on this site. They were
10 shifting it to others. They were trying to blame others.
11 We're offering him as we did at the last trial to show that,
12 from day one, even when we didn't know the source of that --

13 THE COURT: Are we going to go into every minute
14 detail?

15 MR. LYNCH: No. I'll have him explain generally
16 what the system is and where samples were taken.

17 MR. GROSSBART: Why the samples were taken, why they
18 did it there, the types of remediation is highly technical.
19 They're going to quantify it. What perc were they sucking out
20 of the ground? The spilled perc? Other perc? It's highly
21 technical stuff. They had two chances to make this guy an
22 expert, the first trial and now. For some reason, they
23 haven't. I just don't -- it's the subject of a motion
24 *in limine* that you ruled on once already, and that's where
25 we're headed.

1 THE COURT: What did I rule on it?

2 MR. GROSSBART: You ruled he can testify about what
3 he did in some broad sense but not that he can get into this
4 kind of technicality.

5 THE COURT: You make objections. I'll rule. I'm
6 not going to give a broad ruling.

7 (Open court.)

8 (Jury present.)

9 THE COURT: The objection is overruled for the time
10 being.

11 BY MR. LYNCH:

12 Q Mr. Sullivan, can you just generally tell me what you did
13 first to implement a cleanup plan for the Dyce Chemical
14 property?

15 A We prepared a work plan. We installed four wells along
16 the downgradient boundary of the site. That's the downstream
17 side where the groundwater flows. We installed those wells.
18 First we invited MDEQ to come down and oversee that or
19 participate with that drilling. We put those wells in.

20 MR. LYNCH: Julianne, can you please pull up
21 Proposed Exhibit 4817?

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 BY MR. LYNCH:

24 Q Mr. Sullivan, without getting into the specifics of this
25 document, can you tell what this exhibit, what this document

1 is?

2 A This is an initial report of the investigative activities
3 that we conducted.

4 Q And this is -- is this a report that you shared with
5 MDEQ?

6 A Yes, it is.

7 MR. LYNCH: We move its admission, Your Honor.

8 MR. GROSSBART: I don't know what it's relevant to.
9 If their experts want to talk about it, I suppose that's fine,
10 but I don't understand what its relevance would be to the
11 issues.

12 THE COURT: Do you have an expert who is going to
13 talk about it?

14 MR. LYNCH: Not this specific report, Your Honor.

15 The report is just going in to show where he put those borings
16 in.

17 MR. GROSSBART: I don't think that's relevant,
18 either.

19 THE COURT: How many pages is it?

20 MR. LYNCH: I think the report itself is 25. I'm
21 only going to be showing him one page of it.

22 THE COURT: This just shows where he put the wells?

23 MR. LYNCH: Yes, Your Honor. That's what we're
24 using it for. We won't have him go into detail.

25 MR. GROSSBART: There is a stipulation in this case

1 to the locations of all of the wells drilled by all of the
2 consultants. It's photographed.

3 THE COURT: It's sustained.

4 BY MR. LYNCH:

5 Q The four borings that you referred to, Mr. Sullivan, did
6 you drill those borings in the area that MDEQ subsequently
7 identified as the northwest corner source area of the site?

8 A Yes.

9 Q Had that area previously been tested by Maxim or EPA or
10 DEQ?

11 A No. We were the first ones to find it.

12 Q Okay. And just generally what were the results of your
13 samples?

14 A One of the wells, particularly PT-2, had very high levels
15 of perc, considerably higher than anything ever found before
16 at the site.

17 Q Is it fair to say that ATC was the one that discovered
18 the perc contamination in the northwest corner?

19 A Yeah, we did. We were Secor at that point, but yes.

20 Q And I believe you said you had shared the results of your
21 sampling with DEQ?

22 A Yeah. In fact, the project manager, Catherine LeCours,
23 who is still the project manager, was there on site when I put
24 that well in, so we found it together.

25 Q Mr. Sullivan, did you need DEQ or EPA permission or

1 approval to take samples from the Dyce Chemical -- on the Dyce
2 Chemical property itself?

3 A No.

4 Q Were you under any obligation to share the results of
5 your sampling with the DEQ?

6 A I don't believe so.

7 Q Why did you do so?

8 A We worked collaboratively with them. We were also trying
9 to save costs. We knew it was going to be an expensive
10 proposition, and, by sharing our data, it was data they
11 weren't going to have to collect later.

12 Q After you did this initial pilot testing -- let me go
13 back.

14 When was this initial pilot test wells, when were they
15 done?

16 A The first four wells were installed December 2001.

17 Q Okay. And after that pilot testing that found the perc
18 contamination in the northwest corner, did you continue to
19 work on any cleanup plan for the Dyce Chemical property?

20 A Yes, we did.

21 Q What did you do next?

22 A We installed several more wells to further delineate what
23 we had found.

24 Q Okay. And did that also find perc -- well, were those
25 wells also in the northwest corner area?

1 A Yes, they were.

2 Q And what were the results of those samples?

3 A One well, PT-6, which was just near PT-2, had even higher
4 levels than PT-2, of perc.

5 Q Did you actually ever implement any cleanup activities on
6 the site; in particular, in the northwest corner area?

7 A Yes, we did.

8 Q And when did you implement those activities?

9 A We pilot-tested a system in April 2002, an air
10 sparge/soil vapor extraction system.

11 Q Just generally can you tell us what an air sparge/soil
12 vapor extraction system is?

13 A It's a way to remove volatile chemicals from the
14 groundwater. You pump compressed air down into the ground,
15 and, as it bubbles up, it volatilizes the volatiles. And then
16 you have a vacuum pump at the top through piping, and you suck
17 that out of the soil.

18 MR. GROSSBART: Your Honor, this sounds like expert
19 testimony.

20 THE COURT: No, I think he's telling what he did.

21 MR. GROSSBART: But what he did was expert work.

22 THE COURT: Overruled.

23 BY MR. LYNCH:

24 Q At this point, Mr. Sullivan, was Soco under any
25 obligation or order to be performing these cleanup activities

1 on the Dyce Chemical site?

2 A No.

3 Q But that, nevertheless, that had been one of the tasks
4 that was assigned to you when you were first hired?

5 A That's correct.

6 Q After the air sparging test, did you perform any
7 additional cleanup activities on the site?

8 A We did. We then piloted a similar but slightly different
9 system called an ozone sparge/soil vapor extraction system.

10 Q Can you just generally tell us what an ozone sparge
11 system is?

12 A The system we implemented had two primary differences.
13 One of them was we used a mixture of ozone and air as the
14 sparge gas. Ozone is a real strong chemical oxidant, and that
15 improved the performance, but the primary change was we
16 installed trenches that we put slotted pipe in for the vacuum
17 system because we weren't getting enough air recovered with
18 our vacuum pump, so by putting those trenches in, and pea
19 gravel, we were able to greatly improve the vacuum recovery.

20 Q And when did you test this system?

21 A I believe that was in the fall of 2002, maybe December.

22 Q In connection with the ozone sparging, did you take any
23 additional soil or groundwater samples in the northwest corner
24 area?

25 A We did.

1 Q Did you measure any effect on the groundwater levels in
2 the northwest corner as a result of that, that testing?

3 A Yeah. We saw tremendous declines in the concentrations
4 of perc in groundwater.

5 Q Did you measure any effect on the levels of perc in the
6 soils in the northwest corner as a result of that testing?

7 A At one point we went back and collected a couple samples,
8 one sample I can recall near PT-2, where we attempted to
9 duplicate a sample that was collected during the initial
10 installation of those wells.

11 Q What were the results of that sample?

12 A I believe that sample was about 10 percent lower in
13 concentration of perc than the original sample.

14 Q Okay. During these activities, did you detect any
15 increase in perc levels in the soil of the northwest corner as
16 a result of your activities?

17 A I don't believe so.

18 Q After you ran this, the pilot ozone sparge test, did you
19 continue cleanup efforts on the site?

20 A We did. The test was so successful that we just
21 continued to run it. I think within -- the test ran for
22 something like six weeks, and we had 97 percent removal in the
23 groundwater 24 feet away. We continued to run it. In fact,
24 some form of that system continues to run today.

25 Q Did you ever propose to EPA or DEQ that you wanted to

1 expand that system?

2 A We did.

3 Q Okay. And what was their response?

4 A They sent us a request for additional information
5 initially.

6 MR. LYNCH: I'd like to pull up Proposed
7 Exhibit 2558.

8 BY MR. LYNCH:

9 Q Mr. Sullivan, without going into detail as to what's in
10 this document, can you please identify it?

11 A This is our response to EPA's request for additional
12 information about the system.

13 MR. LYNCH: And if you would turn to page 4 of that
14 exhibit, please, Julianne?

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. LYNCH:

17 Q Mr. Sullivan, is this a document that -- are these
18 responses to the EPA's 104(e) request responses that you
19 actually signed on behalf of Soco West?

20 A That's correct.

21 MR. LYNCH: We'd move its admission, Your Honor.

22 MR. GROSSBART: I have no objection, Your Honor.

23 THE COURT: 2558 is admitted.

24 (Exhibit 2558 was received in evidence.)

25 MR. LYNCH: Julianne, would you please turn to

1 page 5 of this exhibit? Actually let's go back to page 4 for
2 a second, please.

3 DOCUMENT TECHNICIAN: (Complied with request.)

4 BY MR. LYNCH:

5 Q Mr. Sullivan, on page 4 of this exhibit, is that your
6 signature on the page?

7 A It is.

8 Q And did you understand that in answering these responses
9 to the EPA's question, you were answering them under oath?

10 A Yes, I did.

11 Q And at the time you answered them, do you believe you had
12 made a complete and thorough review of all documents,
13 information, and sources that were relevant to these requests?

14 A Yes.

15 Q And did you believe your responses to be true, accurate,
16 and complete to the best of your knowledge and information at
17 that time?

18 A Yes.

19 MR. LYNCH: Now turn to page 5, please.

20 DOCUMENT TECHNICIAN: (Complied with request.)

21 BY MR. LYNCH:

22 Q What is this portion of the responses, Mr. Sullivan?

23 A This is the work plan portion of the response where we
24 laid out the details to EPA and MDEQ of what we were proposing
25 for the system that we were calling the boundary control

1 system.

2 MR. LYNCH: You can take it down.

3 DOCUMENT TECHNICIAN: (Complied with request.)

4 BY MR. LYNCH:

5 Q Mr. Sullivan, did you end up implementing that full-scale
6 ozone sparging system?

7 A We got a partial installation in, and then we received
8 another request for information from EPA.

9 Q Did EPA ever advise you that they had any concerns as to
10 you implementing that system?

11 A Yes.

12 Q And what were their concerns that they told you?

13 A In the second letter, they asked us to stop the
14 implementation. They didn't want us to run it, and they were
15 afraid that it might spread contamination outside the
16 boundaries of the current --

17 Q Do you know when that letter was sent?

18 A It was in the summer or spring of April -- or summer or
19 spring of 2003.

20 Q After they requested that you stop the full-scale ozone
21 sparge test, did you have any further discussions with them
22 regarding your plans to clean up the Dyce site?

23 A We did. We went up and met with EPA and DEQ and their
24 consultant in Helena to try to alleviate their concerns.

25 Q And did they ever give you permission to implement any

1 part of the remediation plan?

2 A They did. They sent us a letter after the meeting that
3 said we could implement the soil vapor extraction portion.

4 Q Okay. And can you just generally tell us what the
5 difference was between the soil vapor extraction portion or --
6 and the full-scale plan you proposed?

7 A Yeah. As we talked about, the ozone sparging portion of
8 it, that blows those bubbles up through the soil, and they
9 were afraid it was going to mound the groundwater, and that
10 could possibly tend to move contamination away from where
11 you're doing it. So the vapor extraction system won't do
12 that, so that was the, I guess, the uncontested portion
13 between ourselves and EPA, so they allowed us to install and
14 operate that.

15 MR. LYNCH: Julianne, would you please pull up
16 Admitted Exhibit 3826?

17 Actually I can give you a paper copy of this one.

18 May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. LYNCH:

21 Q Mr. Sullivan, can you identify that document, please?

22 A This was our responses to the second 104(e) request that
23 we had received.

24 Q And that was a request for information from the EPA?

25 A That's correct.

1 MR. LYNCH: Turn to page 3 of this document, please.

2 DOCUMENT TECHNICIAN: (Complied with request.)

3 BY MR. LYNCH:

4 Q Mr. Sullivan, did you again respond to these requests and
5 sign these answers to the requests on behalf of Soco?

6 A Yes, I did.

7 Q And again, you understood you were answering them under
8 oath?

9 A Yes.

10 Q And at the time, did you believe these responses to be
11 true, accurate, and complete to the best of the information
12 you had at that time?

13 A Yes.

14 MR. LYNCH: Please turn to page 9 of this exhibit.
15 And could you highlight the paragraph starting with 4.A?

16 DOCUMENT TECHNICIAN: (Complied with request.)

17 BY MR. LYNCH:

18 Q Mr. Sullivan, I don't know if yours has exhibit numbers;
19 it's D140468.

20 A Yes.

21 MR. GROSSBART: Your Honor, this goes squarely to
22 what I was talking about at sidebar. I think if you look at
23 the language of this document and its attempt to quantify --

24 THE COURT: Sustained.

25 ///

1 BY MR. LYNCH:

2 Q Mr. Sullivan, did you -- what was the EPA's response to
3 this 104(e) request?

4 A To our answers?

5 MR. GROSSBART: Your Honor, excuse me. If he's
6 going to repeat the document that you just sustained the
7 objection on, that's improper.

8 MR. LYNCH: No, he's not.

9 THE COURT: No. It's overruled. Go ahead.

10 BY MR. LYNCH:

11 Q What was the EPA's response -- strike that.

12 After submitting this, these responses to the EPA, did
13 you continue to operate the soil vapor extraction system?

14 A Yes.

15 Q And does that cleanup effort still continue?

16 A Yes.

17 Q And is it continuing to remove contamination from the
18 soils in the northwest corner area?

19 A Yes.

20 Q And have you taken soil or groundwater samples in
21 connection with that soil vapor extraction system?

22 A We did with the installation of it.

23 Q And did that sampling show any increase in the amount of
24 soil contamination in the soils in the northwest corner area
25 as a result of this system?

1 A No.

2 Q Did it show any effect on the soils in the northwest
3 corner area as a result of the operation of the system?

4 A Just the only sampling that I can recall is the sampling
5 that we talked about earlier, the PT-2, where we saw a
6 reduction of about 10 percent.

7 Q Did you take any measurements of amounts of contamination
8 that were being removed by the system?

9 A Yes, we did.

10 Q And how much contamination did you measure was being
11 removed?

12 MR. GROSSBART: Excuse me, Your Honor. That was
13 what was repeated in the exhibit you just sustained.

14 THE COURT: Overruled.

15 THE WITNESS: As of last Friday, I think we'd
16 removed about 109 pounds of perc.

17 BY MR. LYNCH:

18 Q 109 pounds?

19 A Or 109 gallons, excuse me.

20 Q And that's from the northwest corner area soils?

21 A Yes. Those are vadose zone soils.

22 MR. GROSSBART: Leading, and, again, it's expert
23 testimony.

24 THE COURT: Overruled.

25 ///

1 BY MR. LYNCH:

2 Q What are vadose zone soils?

3 A Those are the unsaturated soils, so the soils that are
4 above the water table.

5 Q And how deep does that go in the northwest corner?

6 A The water table varies seasonally, so it averages about
7 5 feet.

8 Q Okay. Is the system, is the system you're implementing,
9 has it removed any perc contamination from the soils -- in the
10 soils below the water table in the northwest corner?

11 A Theoretically it will, but probably not a measurable
12 amount.

13 Q So 109 gallons just from the first 5 feet of soil?

14 A Yes.

15 Q Mr. Sullivan, you've taken quite a number of soil and
16 groundwater samples specifically from the northwest corner
17 area of the Brenntag -- or the Dyce Chemical property,
18 correct?

19 A Yes.

20 Q And the cleanup efforts you've just described have all
21 been devoted to the contamination in that area, correct?

22 A That's correct.

23 Q Why are you focusing so much on that area of
24 contamination at the Dyce Chemical property?

25 A That's the primary source of the plume that goes

1 downgradient. We looked at it initially and estimated, based
2 on some modeling, that it was about 97 percent of the plume.

3 Q I'd like to change topics a little bit now, Mr. Sullivan.

4 I believe you indicated earlier when you were first hired
5 by the Brown firm, it was a two-pronged approach?

6 A Yes.

7 Q And one of the prongs was conducting a site-wide
8 investigation for potential source areas?

9 A That's correct.

10 Q And why were you looking at other possible source areas?

11 A We wanted to make sure that all of the sources were
12 understood and defined, and we knew the nature and extent,
13 because if you implement a cleanup without identifying all of
14 the sources and don't implement it on some unknown sources,
15 the cleanup won't be effective. And the second reason was we
16 didn't want to pay to clean up somebody else's spills.

17 Q And can you tell me, what did your investigation consist
18 of?

19 A Interviews, air photos, searches, historic documents. We
20 initially reviewed all of the documents that were available
21 throughout the site.

22 Q Did you actually interview any Dyce Chemical employees in
23 connection with your investigation?

24 A Yes.

25 Q And who did you interview?

1 A The two primary ones -- well, three primary ones, really:
2 Dave Warne, who was the branch manager. He was a long-time
3 Dyce employee. Craig Guelff. And Suzanne Miller.

4 Q Did you interview any former historic employees of Dyce
5 Chemical?

6 A Yes, a couple.

7 Q Do you know who they were?

8 A I don't recall.

9 Q Did you ask, during these interviews of the Dyce Chemical
10 employees, did you ask them about whether they had seen any
11 perc spills?

12 A Yes, absolutely.

13 Q And did anyone recall any?

14 A No.

15 Q Did you ask them about whether they knew of any inventory
16 discrepancies in perc?

17 A Yes.

18 Q And did anyone recall any?

19 A No.

20 Q In connection with your investigation, Mr. Sullivan, did
21 you ever interview a man named Monte Naff?

22 A No.

23 Q Have you ever met Monte Naff?

24 A I haven't.

25 Q Did you ever interview a man named Rod Hallsten?

1 A No.

2 Q Have you ever met Mr. Hallsten?

3 A No.

4 Q I believe one of the other things you said you did was
5 review aerial photographs in connection with your
6 investigation; is that correct?

7 A That's correct.

8 Q And did you obtain any aerial photographs of the Lockwood
9 site?

10 A We did.

11 Q Where did you obtain those from?

12 A We went to the usual places we get aerial photos. We
13 went to Montana Department of Transportation. They typically
14 have a large catalog. We went to Morrison-Maierle, who
15 maintains a large catalog here in town. We went to USDA, I
16 believe, out of Salt Lake.

17 Q And have you reviewed your collection of photos that you
18 obtained prior to coming to testify today?

19 A Yes.

20 Q Did you obtain any photos from the time period 1975 to
21 1980?

22 A Yes.

23 Q And what were the dates and sources of those photographs?

24 A We had a 1974 photo from Montana Department of
25 Transportation, we had a photo that was labeled 1978 from

1 Morrison-Maierle, and we had a 1979 photo from USDA.

2 MR. LYNCH: Julianne, could I have you please pull
3 up Admitted Exhibit 5017, which the parties have stipulated is
4 a 1974 photo from the Montana Department of Transportation?

5 DOCUMENT TECHNICIAN: (Complied with request.)

6 BY MR. LYNCH:

7 Q Mr. Sullivan, is that the same photograph you obtained,
8 the 1974 photograph you were referring to?

9 A Yes, I believe so.

10 Q You also indicated, I believe, that you obtained a
11 photograph from Morrison-Maierle labeled 1978?

12 A Yes.

13 Q Was that photograph actually taken in 1978?

14 A No. It must have been taken sometime previous to that.

15 MR. LYNCH: Julianne, could you please pull up
16 Admitted Exhibit 5015?

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. LYNCH:

19 Q And, Mr. Sullivan, this is an exhibit the parties have
20 stipulated is a circa 1973 photo from Morrison. Is this the
21 same as the photograph that you had received from them labeled
22 1978?

23 A Yes, it is.

24 Q How can you tell this wasn't taken in 1978?

25 A Because the tank farm is not present on this photo, and,

1 on the '74 photo, the tank farm is in place.

2 Q Okay. And can you circle on this photo the area where
3 the tank farm would later appear?

4 A In there. Not where the building is, but like right in
5 that area.

6 MR. LYNCH: Okay. You can take the photo down.

7 DOCUMENT TECHNICIAN: (Complied with request.)

8 BY MR. LYNCH:

9 Q And the last photo you referred to from this time frame
10 was a 9/15/79 photo from USDA?

11 A That's correct.

12 MR. LYNCH: Julianne, can you please pull up
13 Admitted Exhibit 5030?

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 BY MR. LYNCH:

16 Q Mr. Sullivan, is that identical to the paragraph you
17 obtained from USDA?

18 A Yes, it is.

19 Q And during your investigation of the Lockwood site, did
20 you obtain any other photographs from that time frame, 1975 to
21 1980?

22 A No.

23 MR. LYNCH: You can take that photo down.

24 DOCUMENT TECHNICIAN: (Complied with request.)

25 MR. LYNCH: Can you please pull up Admitted

1 Exhibit 2553?

2 DOCUMENT TECHNICIAN: (Complied with request.)

3 (Discussion off the record at counsel table.)

4 MR. LYNCH: I'm sorry; 2533.

5 MR. GROSSBART: I'm sorry, Mr. Lynch; would you
6 repeat the number, please?

7 MR. LYNCH: 2533.

8 BY MR. LYNCH:

9 Q Mr. Sullivan, this is a November 4, 1975 photo the
10 parties have stipulated was produced to Soco by USF&G in 2005.
11 Did you have this photograph in your possession at any time
12 during your investigation of the Dyce Chemical facility in the
13 Lockwood solvent site?

14 A No, I did not.

15 Q Okay. When was the first time you saw this photograph?

16 A I believe about two years ago.

17 Q You can see in the photograph between the rail spur and
18 the tank farm, there's a green line, and there's another green
19 line labeled "ditch," and I'll try and trace it on the
20 photograph. That area generally. Did you see where I was
21 referring to?

22 A I did.

23 Q On any of the photographs you obtained in connection with
24 your investigation, had you seen that ditch depicted east of
25 the rail spur and west of the tank farm berm?

1 A No.

2 Q Mr. Sullivan, did you ever tell DEQ or EPA that they
3 should investigate someone other than Dyce Chemical as a
4 possible source for the perc contamination that you had found
5 in the northwest corner area of the site?

6 A We asked for additional investigation.

7 Q And did you ask of a particular, different property?

8 A Yeah. The northwest corner impacts are right on the
9 property boundary with Keller Trucking.

10 Q Keller Trucking, where is Keller Trucking located?

11 A Just to the west.

12 MR. LYNCH: Please pull up Proposed Exhibit 4721,
13 and go to the second page, please.

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 BY MR. LYNCH:

16 Q Mr. Sullivan, can you identify what this document is?
17 And if it helps, I can give you a paper copy.

18 May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. LYNCH:

21 Q (Handing.)

22 A Yes. After we asked for additional investigation of that
23 area, of the northwest area, both our property and Kuck, EPA
24 or the MDEQ, actually, at that time agreed and produced a work
25 plan, and these are our comments on that work plan.

1 MR. LYNCH: Okay. We'd move its admission, Your
2 Honor.

3 MR. GROSSBART: I have no objection.

4 THE COURT: What is the number? Forty-seven --

5 MR. LYNCH: 4721.

6 THE COURT: 4721 is admitted.

7 (Exhibit 4721 was received in evidence.)

8 BY MR. LYNCH:

9 Q I direct your attention, Mr. Sullivan, to page 2 of this
10 document, the page that's currently on the screen.

11 And, Julianne, if you could please pull out the paragraph
12 that starts with "Numerous data" and go down to the paragraph
13 that ends just before "geoprobe investigation data"?

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 BY MR. LYNCH:

16 Q Mr. Sullivan, this portion of the document lists various
17 data that you reviewed in connection with your investigation;
18 is that correct?

19 A Excuse me? I was reading this.

20 Q I'm sorry. This portion of the document lists some of
21 the various data that you reviewed in connection with this
22 document.

23 A That's correct.

24 Q And that's listed there. We won't read it.

25 The final sentence says, "In summary, the RI has not

1 adequately investigated potential sources, particularly Keller
2 Transport and Kuck Trucking."

3 So is this one of the documents, Mr. Sullivan, in which
4 you're asking EPA -- asking DEQ to investigate Keller as a
5 potential source of the northwest corner?

6 A Yes.

7 MR. LYNCH: Would you go to the next page, please,
8 and pull out the paragraph that begins with "Soil analytical
9 data"?

10 DOCUMENT TECHNICIAN: (Complied with request.)

11 BY MR. LYNCH:

12 Q Mr. Sullivan, in this paragraph, are you providing the
13 DEQ with the basis for asking them to investigate Keller?

14 A Yes.

15 Q I won't have you read the whole paragraph, but can you
16 just tell me, what was the basis for your request to EPA to
17 investigate Keller as a potential source of the northwest
18 corner?

19 A We couldn't find how that PCE got to be in that area. It
20 was much different than anything we'd seen in the chemical
21 storage and handling area, the operational area, so we were
22 giving them some technical data to support our request for
23 additional investigation.

24 MR. GROSSBART: Your Honor, this is now expert
25 testimony. The exhibit is in. They can publish it, but it's

1 his explanation of it is expert testimony.

2 THE COURT: Well, probably is, except I'd rather
3 have him give a short explanation than read every sentence in
4 there, which he'd be entitled to do since it's in evidence.
5 So it's overruled.

6 MR. LYNCH: Okay.

7 BY MR. LYNCH:

8 Q Mr. Sullivan, can you just summarize what the reasons
9 were you were telling EPA to investigate Keller?

10 A It didn't match the chemical signature of the chemical
11 storage and handling area.

12 Q What didn't match?

13 A The perc that we found in the northwest area.

14 Q What was the difference in the chemical signature?

15 A The chemicals that had been found in the tank farm area
16 were much different, different families of chemicals in
17 addition to the chlorinated solvents. They included a lot of
18 BTEX, which is benzene, toluene, ethylbenzene, and xylenes,
19 which is sometimes referred to as a distributor's profile, a
20 chemical distributor profile. We didn't see that same profile
21 at all down in the northwest area, and the concentrations of
22 PCE in the northwest area were orders of magnitude above what
23 we saw in the tank farm area.

24 MR. LYNCH: You can close out of that document,
25 Julianne.

1 DOCUMENT TECHNICIAN: (Complied with request.)

2 BY MR. LYNCH:

3 Q Mr. Sullivan, in connection with your work on the
4 Lockwood solvent site, did you ever tell EPA or the Weiss
5 action plaintiffs that you couldn't attribute the northwest
6 corner contamination that you found to Dyce Chemical's
7 operations?

8 A Yes.

9 MR. LYNCH: Can we go back to Admitted Exhibit 2558,
10 please?

11 DOCUMENT TECHNICIAN: (Complied with request.)

12 BY MR. LYNCH:

13 Q And, Mr. Sullivan, showing you 2558, which, again, is
14 responses you'd answered under oath to an EPA request for
15 information -- turn to page 19 of that exhibit, please,
16 Julianne. Pull out the second paragraph.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. LYNCH:

19 Q The final two sentences of that paragraph, Mr. Sullivan,
20 state, "The impacts near the Keller/Brenntag property boundary
21 do not exhibit significant concentrations of aromatic
22 constituents. Thus, is it reasonable to conclude that the
23 impacts in the chemical handling area are from a distinctly
24 different source than the impacts near the Keller/Brenntag
25 property boundary."

1 Again, is that the basis for you telling EPA that you
2 couldn't attribute the northwest corner contamination to Dyce
3 Chemical's operations?

4 MR. GROSSBART: Leading and expert testimony again.

5 THE COURT: I will overrule the leading. Sustained
6 on the second.

7 BY MR. LYNCH:

8 Q Mr. Sullivan, did the EPA respond to your requests for
9 additional investigation on the Keller property as a potential
10 source of the northwest corner contamination?

11 A They did.

12 Q And what did they do?

13 A They said, "We're not going to do any more investigation.
14 It's time to move to the cleanup phase."

15 MR. LYNCH: Can you just pull up Proposed
16 Exhibit 4757?

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. LYNCH:

19 Q Mr. Sullivan, can you identify this document?

20 A I believe that's our comments to the DEQ's remedial
21 investigation report.

22 Q Could you look at it? Maybe I can give you a paper copy.

23 A Yeah. I can't see it very clearly on here.

24 MR. LYNCH: May I approach, Your Honor?

25 THE COURT: Yes.

1 BY MR. LYNCH:

2 Q (Handing.)

3 A Really couldn't see clearly.

4 This is their, MDEQ's, response to our comments on the RI
5 report.

6 MR. LYNCH: We'd move its admission, Your Honor.

7 MR. GROSSBART: No objection.

8 THE COURT: 4757 is admitted.

9 (Exhibit 4757 was received in evidence.)

10 BY MR. LYNCH:

11 Q Mr. Sullivan, what's the date of this letter from MDEQ to
12 you?

13 A August 3, 2004.

14 MR. LYNCH: Julianne, could you please turn to
15 page 2 of the exhibit? And please pull out the paragraph that
16 begins with, "Keller Transport."

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. LYNCH:

19 Q The final two sentences of the paragraph, Mr. Sullivan,
20 read, "Monitoring wells installed during the RI historical
21 direct push results, including those of 2003, and soil and
22 groundwater data from Brenntag's own investigations indicate
23 the highest contaminant concentrations are on Brenntag's
24 property and does not identify a source of contamination on
25 the Keller property."

1 Was this the DEQ's final word to you on Keller as being a
2 potential source for the northwest corner contamination?

3 A I believe it was.

4 Q So once the DEQ told you that the northwest corner
5 contamination was definitely coming from Dyce Chemical, did
6 you go back and do any further investigation to see what you
7 might have missed, where was this coming from?

8 A No.

9 Q And that was in mid 2004. Since then, have you been
10 asked to do any further investigation into a potential source
11 for the northwest corner contamination that you discovered --

12 A No.

13 Q -- or northwest corner contamination?

14 A No.

15 Q I believe you earlier testified that you wouldn't need
16 permission to conduct sampling on the Dyce Chemical property
17 itself; is that correct?

18 A That's correct.

19 Q Is that still the case?

20 A Yes.

21 Q Has Soco asked you to conduct any additional sampling on
22 that site?

23 A No.

24 Q To your knowledge, has either of the insurance companies
25 asked that additional sampling be conducted on that site?

1 A No.

2 Q Mr. Sullivan, throughout your work on the Lockwood
3 solvent site, you fully cooperated with the DEQ and EPA?

4 A Yes.

5 Q Have you answered their requests for information
6 truthfully and accurately and to the best of your knowledge,
7 given the information you had at that time?

8 A Yes.

9 Q Did you also share your reports and information regarding
10 your assessments and conclusions as to the contamination on
11 the Dyce Chemical property with Dyce Chemical's insurance --
12 with Soco's insurance companies?

13 A We did.

14 Q Are you continuing to work with the DEQ and EPA on the
15 cleanup of the Dyce Chemical property?

16 A Yes, we are.

17 Q And has that been a consistent goal of yours since you
18 were first hired in 2001?

19 A Yes.

20 Q And does that specifically include cleanup of the
21 northwest corner contamination?

22 A Yes.

23 Q And was that a principal focus of your work even when you
24 were questioning whether Dyce Chemical was the source of that
25 contamination?

1 A Yes. We were doing pilot testing and remediation even
2 when we didn't know what the source was.

3 MR. LYNCH: I have no further questions.

4 THE COURT: You may cross.

5 CROSS-EXAMINATION

6 BY MR. GROSSBART:

7 Q I want to -- we met before, I believe, did we not,
8 Mr. Sullivan --

9 A We did.

10 Q -- out at the site?

11 Good morning.

12 Can we go to Admitted 5051, please?

13 DOCUMENT TECHNICIAN: (Complied with request.)

14 BY MR. GROSSBART:

15 Q You recognize this photo, do you not, Mr. Sullivan, as a
16 May 2004 aerial photograph of the Dyce plant as of that time?

17 A Yes.

18 Q And in 2004, you'd already been hired, and you might have
19 even been there on this very day. Certainly you were there in
20 that period of time, right?

21 A That's correct.

22 Q I want to try to understand a little bit about how this,
23 this site is laid out. And would you agree with me that at
24 least on this photo, the loading and unloading area, as it's
25 been commonly referred, is roughly in through there? I'll put

1 my -- try to put my finger on it. Is that a fair statement?

2 A Yeah. I think, yeah. Right -- can I do that a little
3 bit?

4 Q Thank you very much.

5 A Right in that breezeway area?

6 Q Yeah. I mean, I had to compensate for where it's good.

7 All right. Now why don't we take and put up, Neil, if
8 you would, 3674, page 1. I believe that's also admitted.

9 DOCUMENT TECHNICIAN: (Complied with request.)

10 BY MR. GROSSBART:

11 Q Now this is a photo even more current than the one we saw
12 before, isn't it?

13 A Yes, it is.

14 Q Have you seen these photos before?

15 A No, I have not.

16 Q You recognize that as what has been commonly referred to
17 as the lower warehouse?

18 A Yes.

19 MR. GROSSBART: All right. Neil, just toggle back
20 to 5051, if you would, the photo.

21 DOCUMENT TECHNICIAN: (Complied with request.)

22 BY MR. GROSSBART:

23 Q That's right there, isn't it? That's that building,
24 isn't it?

25 A Yes.

1 MR. GROSSBART: All right. Neil, back to the photo,
2 please.

3 DOCUMENT TECHNICIAN: (Complied with request.)

4 BY MR. GROSSBART:

5 Q And you see here that in front of the lower warehouse,
6 it's concrete, at least at the time of this photo, which is
7 from last year?

8 A Yes.

9 Q All right. I think that's stipulated to.

10 But you understand historically, based upon your work,
11 that many years ago that was asphalt, correct?

12 A Yes.

13 MR. GROSSBART: All right. This has not been
14 admitted yet, Your Honor.

15 Put up page 17, Neil, of Exhibit 3660.

16 And I would move its admission. It's a photo taken
17 on one of our visits. I don't know if there's any objection
18 to it.

19 MR. LYNCH: No objection.

20 MR. GROSSBART: All right. Just this page.

21 THE COURT: 3660 is admitted.

22 (Exhibit 3660 was received in evidence.)

23 BY MR. GROSSBART:

24 Q And again, you see the lower warehouse in this photo but
25 a farther-away view?

1 A Yes.

2 Q All right. And all this in here, that's asphalt,
3 correct?

4 A I believe so. It's kind of gravelly. There's some
5 gravel areas and some asphalt. I can't -- it looks like
6 asphalt, but I'm not positive.

7 Q Okay. All of the times you've been out there, you don't
8 know if it's asphalt?

9 A Well, I don't know where, exactly where this picture is
10 taken. I know there's some gravel areas right immediately
11 adjacent.

12 Q Well, let me ask you this. Do you know that the concrete
13 transitions to asphalt right there?

14 A Yes.

15 Q Okay. Fair enough.

16 And now would you put up, please, Neil, page 26 of 3674?

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 THE COURT: Is that admitted?

19 MR. GROSSBART: That is admitted, Your Honor.

20 Page 26 of 3674.

21 DOCUMENT TECHNICIAN: (Complied with request.)

22 BY MR. GROSSBART:

23 Q And you recognize this, sir, as the back of the lower
24 warehouse that we've just been talking about?

25 A Yes.

1 Q Right?

2 A Yes.

3 Q And this little alleyway that's featured on this photo
4 would be to its immediate north?

5 A Yeah. It's north and west of the breezeway area.

6 Q I'm sorry, sir?

7 A Yes, north and west of the breezeway area. Is that what
8 your question is?

9 Q Well, this wall of the warehouse is best described, if
10 you only have four directions to choose from, that would be
11 the north wall?

12 A Yes.

13 MR. GROSSBART: Okay. And if you go back to
14 Exhibit, toggle back to Exhibit 5051, Neil, please.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. GROSSBART:

17 Q What we're seeing there, and I don't know if it's going
18 to come out, but we're seeing in through there. And I'm going
19 to take that off. But that's where we were looking just now,
20 right?

21 A Generally, yes.

22 Q And you can see, on this photo, a railroad track or spur,
23 and it even looks like there's a tanker car on the tracks?
24 Fair statement?

25 A Yes.

1 Q All right. So going back to page 26, Neil, of 3674,
2 that's, in fact, the railroad tracks --

3 A Yes.

4 Q -- that I just pointed out.

5 And you said you saw a photo for the first time.

6 Mr. Lynch put it up. It was Exhibit 2553, which had a ditch
7 delineated on it. Do you recall that testimony?

8 A I do.

9 Q All right. I don't need that. Why don't we go back --
10 thank you.

11 And if I was to transpose that ditch onto this
12 photograph, we'd be talking about something just immediately
13 east of that railroad spur, right?

14 A Can I look at that photo again?

15 Q Sure.

16 A I haven't looked at it that closely.

17 MR. GROSSBART: 2553, if you would put that on.
18 It's the 1975 photo, 2553.

19 MR. BANKER: 2533.

20 MR. GROSSBART: I'm sorry. 2533. Thank you, Paul.

21 DOCUMENT TECHNICIAN: (Complied with request.)

22 BY MR. GROSSBART:

23 Q The ditch depicted on that particular photo that was
24 commented upon in your earlier testimony is immediately east
25 of the railroad spur, correct?

1 A Yeah. I don't -- let's go back to that picture.

2 Q Sure. That would be page 26 of 3674. It may even be
3 under that sidewalk area.

4 A The sidewalk or even possibly that building on the left.

5 Q Well, the lower warehouse hasn't moved since 1975, has
6 it?

7 A No, but I don't believe that that building was in the
8 previous photo, was it?

9 Q We can look at it.

10 Go back to it.

11 DOCUMENT TECHNICIAN: (Complied with request.)

12 THE WITNESS: See, what I did is I looked at those
13 white-type tanks, and I'm guessing the diameter of those are
14 10 or 12 feet so I just quickly --

15 BY MR. GROSSBART:

16 Q All right.

17 A -- looked over there and thought it's 8 to 10 feet,
18 probably, east of that rail track, just guessing.

19 Q Just guessing? All right.

20 Let's go back to page 26.

21 DOCUMENT TECHNICIAN: (Complied with request.)

22 BY MR. GROSSBART:

23 Q So somewhere either next to the tracks, immediately
24 beyond them, or under the sidewalk, or perhaps under this shed
25 is the ditch you saw in the prior photo, right?

1 A Yes.

2 Q And this plant is deserted now, right? There's nothing
3 going on out at the old Dyce facility?

4 A That's correct.

5 Q And that's been the case now for, what, two or three
6 years?

7 A Yeah.

8 Q All right. There's nothing going on in that little shed
9 now, is there?

10 A No.

11 Q All right. Have you been inside there before?

12 A Probably. I don't -- I haven't been in the buildings
13 that much, but probably.

14 Q All right. So maybe it has a concrete floor. Maybe it
15 doesn't?

16 A Yeah.

17 Q It wouldn't be hard to knock out what's ever on that
18 floor surface and look underneath, would it --

19 A No.

20 Q -- as far as you know?

21 A No. You could sample underneath there.

22 Q All right. Let's, let's go to the next -- by the way,
23 let me ask you this. You, first with Secor and then with ATC,
24 dropped wells or made sampling locations all over the Dyce
25 property. You weren't just looking in the northwest corner,

1 right?

2 A No, we primarily looked in the northwest corner.

3 Q Okay. But I didn't ask you that.

4 Didn't you take samples from the operational area of the
5 plant itself?

6 A The only ones that I can recall are a couple that we
7 collected, because they were talking about changing the
8 configuration of their tank farm area, and so we collected
9 some for their operational group.

10 Q Just a couple?

11 A Four or five.

12 Q And -- okay. Are you sure about that?

13 A No, I'm not.

14 Q What kind of samples were those?

15 A We tested the concrete, and we tested the soils
16 immediately under the concrete.

17 Q All right. We'll come back to that.

18 A Is that the set you're talking about?

19 Q It may be.

20 A Okay.

21 Q It may be.

22 Maxim, your predecessor, you talked about the Maxim
23 report.

24 A Yes.

25 Q They were Dyce's consultants before you were hired?

1 A Yes.

2 Q And they sampled in the operational area?

3 A Yes.

4 Q All right. And isn't it a fact that between Maxim,
5 before you, and then you, first with Secor and ATC, that
6 Soco's consultants took samples from 70 or 80 different spots,
7 some multiple times, but 70 or 80 different spots alone on the
8 Dyce property? You wouldn't dispute that, would you?

9 A I guess that's probably in the ballpark.

10 Q Okay. And no one, as of whatever it is, March 2010, has
11 looked in what may have been or is believed to be this ditch
12 area for what's in the soil there or in the groundwater
13 immediately below that, as far as you know?

14 A Well, just to the left in this photo, there's been quite
15 a bit of sampling, three, four, five points, five between the
16 DEQ and Maxim. So not in this specific corner, no, but in
17 that area, there's been.

18 Q I'm talking about on the ditch that you looked at in
19 Exhibit 2533. Has anyone dropped a sampling mechanism of any
20 kind on that ditch line, to your knowledge?

21 A I believe there's two that were close to a Maxim sample
22 point and a well by MDEQ.

23 Q Which ones?

24 A Do you have a map showing the locations? They're down
25 next to the -- they're probably in the range of 40 feet to the

1 left, down the ditch from here.

2 Q All right. Let's go back to 2533.

3 Tell me, tell me what the locations are, putting aside
4 what the name of the actual number is, where you believe there
5 was ditch testing.

6 A There -- well, no. I didn't say there was ditch testing.
7 I said there were samples collected along the line of where
8 you're showing me this ditch.

9 Q All right. Okay.

10 A My recollection is there was sampling -- it's not showing
11 up in the right spot. You have to draw offset.

12 Okay. About where that third line is, somewhere in
13 there, my recollection is there's two sample points somewhere
14 in that vicinity.

15 Q And do they -- and do you recall what they show?

16 A I believe there were impacts in both of them, yes.

17 Q Okay. And you would need to see a plot of the wells in
18 order to tell me what the name of those sampling points are?

19 A Yes.

20 MR. GROSSBART: All right. Can we put up -- bear
21 with me.

22 (Discussion off the record at counsel table.)

23 MR. GROSSBART: Can you put up stipulated
24 Exhibit 5061?

25 DOCUMENT TECHNICIAN: (Complied with request.)

1 BY MR. GROSSBART:

2 Q Do you see -- I know this is a complicated document. Do
3 you see, do you see the two, I guess, sampling locations you
4 were referring to on this stipulated exhibit?

5 A Can you have him zoom in on that area?

6 MR. GROSSBART: Sure. Neil, would you zoom in --
7 I'm going to just draw it, Neil. Right in through here. Zoom
8 in. Let me get rid of that.

9 DOCUMENT TECHNICIAN: (Complied with request.)

10 THE WITNESS: Yeah, I think I was referring probably
11 to BHI and MP-106.

12 (Discussion off the record.)

13 BY MR. GROSSBART:

14 Q All right. Now this is a picture, this is the 1975
15 photo. We've highlighted those --

16 MR. LYNCH: John, I think this is '77.

17 MR. GROSSBART: All right. Fair enough.

18 BY MR. GROSSBART:

19 Q This is the '77 photo on which these well plots are
20 displayed. Do you have that in front of you?

21 A Yes.

22 Q I've highlighted the ones you've just mentioned, right?

23 A Yes.

24 Q All right. And on this photo, you recognize both of
25 those as the other side of the berm that existed at that time?

1 A (No response.)

2 Q The containment berm?

3 A To the east of what looks to be a berm?

4 Q Right. And the ditch you were talking about on
5 Exhibit 2533 was to the west of what looks to be a berm,
6 right?

7 A I believe so.

8 Q Okay. And that's as close, then, as anyone got to
9 testing the ditch depicted on 2533 based upon your going on
10 ten years working on this project?

11 A Yes.

12 MR. GROSSBART: Okay. All right. Please remove
13 that.

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 MR. GROSSBART: Let's go back to page 41 of
16 Exhibit 3674, please.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 MR. GROSSBART: All right. Now let's go back to 28
19 so we have some continuity here, page 28.

20 DOCUMENT TECHNICIAN: (Complied with request.)

21 BY MR. GROSSBART:

22 Q This is looking back towards the lower warehouse, uprail,
23 if you will, on the railroad spur.

24 A Sure.

25 Q You recognize that, right?

1 A Yes, I do.

2 Q And these tracks, as they existed in this photo, are in
3 exactly the same place they were in the 1975 photo? You know
4 they haven't been moved laterally, correct?

5 A Yeah. I think they've only been extended.

6 Q They've been extended, but where we're looking now is not
7 the extension part. These are circa 1970 tracks we're looking
8 at?

9 A Yes.

10 MR. GROSSBART: Okay. And if you'd go to page 73,
11 Neil?

12 DOCUMENT TECHNICIAN: (Complied with request.)

13 BY MR. GROSSBART:

14 Q You recognize this as the northwest corner --

15 A Yes.

16 Q -- right?

17 And we're looking sort of southwest, are we not?

18 A We are.

19 Q And you see sort of a broken-down, chain-link fence?

20 That's the western boundary of the property demarcated by that
21 fence, right?

22 A Yes.

23 Q And the other side of the fence is Keller Truck. You
24 talked about Keller Truck earlier today. Those are all Keller
25 Truck trucks, or at least on their property?

1 A Yes.

2 MR. GROSSBART: Okay. Now let's go to page 51,
3 please, Neil.

4 DOCUMENT TECHNICIAN: (Complied with request.)

5 BY MR. GROSSBART:

6 Q This is a continuation of the tracks from where we left
7 off two pictures ago, isn't it?

8 A Yes.

9 Q And you mentioned that the tracks were extended at some
10 later point in time.

11 A Yes.

12 Q And what we're seeing here is at least a portion of that
13 extension, are we not?

14 A That's correct.

15 Q And generally the ground slopes generally in this area,
16 naturally slopes from the southeast towards the northwest.

17 A Yes.

18 Q Okay. And, indeed, these tracks are sort of going from
19 the southeast to the northwest, broadly and roughly speaking;
20 isn't that a fair statement?

21 A I think they might be going more north.

22 MR. GROSSBART: All right. Well, why don't you put,
23 Neil, put up Exhibit 3059, page 121.

24 DOCUMENT TECHNICIAN: (Complied with request.)

25 ///

1 BY MR. GROSSBART:

2 Q We saw this -- well, these people here in the courtroom
3 saw this yesterday. And what I meant to say is, and I don't
4 mean to quibble with you, but basically going --

5 A No, you're right.

6 Q -- in the direction of the lay of the land.

7 A Yes.

8 MR. GROSSBART: Okay. So let's go back to the
9 previous photo, Neil.

10 DOCUMENT TECHNICIAN: (Complied with request.)

11 BY MR. GROSSBART:

12 Q This is the extension of the tracks going out towards the
13 northwest, and in order to extend the tracks, in later years
14 the company had to add fill because the land was otherwise
15 sloping?

16 A Right.

17 Q So in order to make the extension of the railroad spur
18 level, fill had to be added, in fact?

19 A Yes.

20 Q And that's what we're seeing here, broken concrete, dirt,
21 whatever, but some sort of fill material or combination of
22 fill materials were added to level off the land so you could
23 add tracks, right?

24 A Yes.

25 Q And so whatever ditches or whatever else that used to be

1 alongside and underneath that area has sort of been entombed
2 by this fill. That's a fair statement, isn't it?

3 A Entombed or destroyed during construction.

4 Q Well, no one had to dig anything up? Fill was added
5 here? Nobody was excavating.

6 MR. LYNCH: Objection. The witness wasn't there
7 during that time frame.

8 BY MR. GROSSBART:

9 Q You can tell that from the photos, can't you, sir?

10 A Excuse me?

11 Q You can tell that from the photos, can't you?

12 A Tell what?

13 Q That we're not looking at excavation. We're looking at
14 earth being added, not earth being removed?

15 A I've been around a lot of earth moving, and you don't
16 just drop it on the surface. You push it in with Cats. I
17 don't know. I can't tell you how it was put there.

18 Q Yeah. So all of this fill here was very carefully laid
19 down so you could add the railroad tracks? Isn't stuff just
20 dumped there in order to build up the tracks? Isn't that just
21 logical?

22 A I bet it was pushed in and compacted.

23 MR. GROSSBART: Okay. Would you go back to the
24 photo on page 73, Neil?

25 DOCUMENT TECHNICIAN: (Complied with request.)

1 BY MR. GROSSBART:

2 Q Is that one of the testing spots?

3 A That's what we refer to as a stilling well. It's a piece
4 of plastic that goes down into one of those trenches that I
5 described earlier.

6 Q For the soil vapor extraction?

7 A Yes.

8 Q Those trenches are 11 feet deep, are they not?

9 A Yes.

10 Q And the line between the saturated soil and the
11 unsaturated soil out there is, you said, 5 feet, right?

12 A I said it varied seasonally.

13 Q Well, varied from what to what?

14 A Well, I think over time it's varied quite a bit. When we
15 first got involved here, they said that that area was
16 historically swampy, and when we moved in a drill rig to drill
17 MW-2, it was still fairly swampy. I think it's varied from
18 near the surface to probably 6 feet, just off the top of my
19 head.

20 Q All right. Well, it wasn't, it wasn't 11 feet? There
21 wasn't water tables of 11 --

22 A No.

23 Q -- and 12 feet like you see in the main part of the
24 plant, right?

25 A No.

1 Q All right. So your trenches for your soil vapor
2 extraction went well into the saturated soils?

3 A Yeah. They went to the bottom of the fine grain section.

4 Q Down 11 feet, right?

5 A Yes.

6 Q At a time when it's fair to broadly describe the water
7 table at about 5 feet?

8 A Yes.

9 Q And it's your testimony that what you were pulling out of
10 those trenches was just in the upper 5 feet?

11 A Yes.

12 Q That's not what you told the EPA, though, is it?

13 A I believe it is. What I said earlier was that
14 theoretically it's going to pull slight amounts but probably
15 not measurable from below the water table.

16 Q Didn't you tell the EPA, quote, that volatilization -- at
17 least when the project started and most of the mass was being
18 removed, that quote, "Volatilization of dissolved constituents
19 contributed to the high mass removal rate observed at
20 startup"? You said that? Those are your words. You remember
21 saying that, don't you?

22 MR. LYNCH: Objection, foundation. Can we have the
23 document?

24 THE WITNESS: I said that regarding --

25 THE COURT: What document are you referring to?

1 MR. GROSSBART: All right. Put up Admitted
2 Exhibit 44, page 40, please.

3 THE WITNESS: I said that in regard to the air
4 sparge or ozone sparge/soil vapor extraction. This system
5 here that we're looking at, the picture, has never been
6 operated during sparging, so it's apples and oranges.

7 MR. GROSSBART: Would you put up Exhibit 44 under
8 it, page 40, please? Why don't we start with the first page
9 of Exhibit 4400. And go past the cover sheets to, bear with
10 me, page 30.

11 DOCUMENT TECHNICIAN: (Complied with request.)

12 MR. LYNCH: Your Honor, I don't show that this
13 exhibit has been admitted.

14 MR. GROSSBART: Exhibit 4400. I thought it was
15 admitted.

16 MR. LYNCH: We have no objection.

17 MR. GROSSBART: All right.

18 THE COURT: Then if it hasn't been, it is now.

19 (Exhibit 4400 was received in evidence.)

20 MR. GROSSBART: All right.

21 BY MR. GROSSBART:

22 Q So now it's Admitted Exhibit 4400. This is a report
23 based upon your soil vapor extraction project only, not your
24 sparging project, but your soil vapor extraction, right?

25 A Okay.

1 Q And this was done in January of 2005?

2 A (No response.)

3 MR. GROSSBART: Go to the next page, please, Neil --

4 THE WITNESS: Yes.

5 MR. GROSSBART: -- when the report was done.

6 DOCUMENT TECHNICIAN: (Complied with request.)

7 BY MR. GROSSBART:

8 Q All right. And this is the reports of your nonsparging
9 work?

10 A Yes.

11 Q All right. Now I'll go back to my question.

12 Put up page 40, please.

13 DOCUMENT TECHNICIAN: (Complied with request.)

14 MR. GROSSBART: And, Neil, we're at the bottom of
15 the page about six lines up, "It is believed." And highlight
16 beginning with, "It is believed." That sentence to right
17 before, "because." Actually just stop right there.

18 DOCUMENT TECHNICIAN: (Complied with request.)

19 BY MR. GROSSBART:

20 Q "It is believed that initially volatilization of
21 dissolved constituents contributed to the high mass removal
22 rate observed at startup." That's what you said, correct,
23 sir?

24 A Yes.

25 Q And dissolved constituents are -- you're referring to

1 contamination in the saturated zone? That's what you mean by
2 the reference to "dissolved constituents"?

3 A That's correct.

4 MR. GROSSBART: All right. You can take it down.

5 DOCUMENT TECHNICIAN: (Complied with request.)

6 BY MR. GROSSBART:

7 Q That's perc from the saturated zone? That's what you're
8 talking about there, right? Not the vadose zone, the
9 saturated zone.

10 A Yeah. Just the top thin layer. When you start up a
11 remediation system, typically you see a kick, a high removal
12 rate.

13 Q Right. Well, whatever. But it's from the saturated
14 zone, not the vadose zone? That's just true, isn't it?

15 A It's true for the top section, yes, a thin section.

16 Q Well, if it's not from the vadose zone, it's from the
17 saturated zone. I'm not asking if it's from the top of the
18 saturated zone --

19 A Okay.

20 Q -- or the middle of the saturated zone, or the bottom of
21 the saturated zone. It's from the saturated zone. Under the
22 water table. Right?

23 A It's the top of the water table, yes.

24 MR. GROSSBART: Okay. Now would you go back to
25 5051, the 2004 photo? And, Neil, would you please highlight

1 or make this bigger? I'm interested in asking about that
2 area. Get rid of that. A little more, if you could, please.

3 DOCUMENT TECHNICIAN: (Complied with request.)

4 BY MR. GROSSBART:

5 Q All right. On this photo, this is the main area of
6 tanks. You're with me on that?

7 A Yes.

8 Q And then immediately beyond those, here, here, and
9 here -- let me get rid of these. I know these are annoying
10 little marks. But now let me get rid of those -- there appear
11 to be basins of some sort?

12 A I think those basins you're talking about are just to the
13 north. Those three lines you drew across, that's that road
14 just to the north.

15 Q Well, I was trying not to draw on the basin --

16 A Okay.

17 Q -- but basin, basin, basin.

18 A Correct.

19 Q That's what I'm talking about.

20 A All right.

21 Q Those are some sort of basin, right?

22 A Yeah, they're the stormwater collection areas for those
23 tank farms.

24 Q All right. Those basins collect surface runoff from
25 storms, waterfalls in the tank farm, picks up whatever it's

1 going to pick up? Collects in the basin?

2 A That's correct.

3 MR. GROSSBART: Okay. And, Neil, if you put the
4 admitted photo from 1987, which I believe is 5042, please?
5 Enlarge the same area, please, right in here.

6 DOCUMENT TECHNICIAN: (Complied with request.)

7 BY MR. GROSSBART:

8 Q Sort of a better view, but those are the same basins, are
9 they not?

10 A I believe so. They look to be.

11 Q So those basins go back to at least 1987? Fair
12 statement, right?

13 A I believe so. There's some little things sticking out
14 here that I don't recall, so they may or may not be, but it
15 looks like they're similar.

16 Q Well, do you have any reason to believe the basins
17 changed between 1987 and 2004, given all of your work?

18 A I have no information either way on changes, no.

19 Q Okay. Let's go back to the 2004 photo, then, and talk
20 about the basins.

21 Neil, could you enlarge on the basins, please?

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 MR. GROSSBART: Perfect.

24 BY MR. GROSSBART:

25 Q How deep are they?

1 A Below the ground surface.

2 Q Okay. Can you --

3 A As compared to what?

4 Q Well, if I stood on the edge and jumped in, how far down
5 would I go?

6 A The concrete is about a foot above the surface, and I
7 would guess you would probably go down maybe 3 feet from the
8 top of the concrete, so 2 to 3 feet deep.

9 Q Okay. And you went into this basin. I assume you took
10 the water out and then jacked up the concrete floor to that
11 basin and looked underneath?

12 A We cut a hole in it and drilled in there.

13 Q You went through 6 inches of concrete and took a sample,
14 right?

15 A We did.

16 Q And you found, on the underside of the concrete, you
17 found perc?

18 A Yes.

19 Q Fairly high concentration of perc, too?

20 A Similar to what Maxim and the DEQ had found in that area.

21 Q And, well --

22 THE COURT: Is this a place where we can take a
23 recess?

24 MR. GROSSBART: This would be fine. I need a drink
25 of water.

1 THE COURT: Yeah, let's take a brief recess.

2 THE LAW CLERK: All rise.

3 (Recess taken from 10:08:35 to 10:26:47.)

4 (Open court.)

5 (Jury present.)

6 THE COURT: Please be seated.

7 Mr. Grossbart, you may continue.

8 MR. GROSSBART: Thank you, Your Honor.

9 Would you put the 2004 photo, 5051, back up and get
10 everybody squared away here?

11 DOCUMENT TECHNICIAN: (Complied with request.)

12 BY MR. GROSSBART:

13 Q We were talking before the break, Mr. Sullivan, about
14 these basins and testing work you had done there.

15 And, Neil, would you expand on this, please, at the basin
16 area?

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. GROSSBART:

19 Q And the basin where you went in and dug up the concrete,
20 do you recall which of the three it was?

21 A Yes. It was the one in the northeast corner.

22 Q All right. And you had a report that you did of this
23 work. I believe it's Admitted Exhibit 4811. Let's just
24 toggle to that for a minute.

25 MR. LYNCH: It's not admitted, but there's no

1 objection.

2 MR. GROSSBART: I apologize.

3 THE COURT: 4811 is admitted.

4 (Exhibit 4811 was received in evidence.)

5 BY MR. GROSSBART:

6 Q All right. And that is at least the cover page of the
7 report that describes, among other things, you looking
8 underneath that basin floor; is that correct?

9 A Yes.

10 Q Okay. Let's go back to the photo. And your report
11 has -- it's a poor copy.

12 Actually, I'm sorry, go back to the report, Neil;
13 specifically, page 6 of the report. 4811-6.

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 BY MR. GROSSBART:

16 Q You have -- you recognize this as a very poor Xerox of
17 the plant and where you sampled?

18 A Yes.

19 MR. GROSSBART: Okay. Now if we go back to the
20 photo, 5051, Neil, would you put up our Demonstrative
21 Exhibit 469, page 1?

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 BY MR. GROSSBART:

24 Q And would you agree with me that that demonstrative, on
25 the photo, depicts where you sampled?

1 A I believe it does.

2 Q All right. And one of the dots on this photo is red, and
3 that's where you did the sample where you went to the bottom
4 of that basin and dug it up, right? That's the basin we're
5 talking about?

6 A Right. We cut the concrete and drilled through it.

7 Q Right. And that is not one of the -- that red dot, that
8 sample, is not within one of the source areas that we've seen
9 on other figures in this trial, is it, that the EPA found?

10 A (No response.)

11 Q I'll make it easy for you.

12 Why don't you put up page 2 of this demonstrative.

13 DOCUMENT TECHNICIAN: (Complied with request.)

14 BY MR. GROSSBART:

15 Q You see here, right here we've added a dotted line
16 signifying -- Neil, put what's toggled as 3059, page 121.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. GROSSBART:

19 Q That area here which we've seen before, let's go --
20 whoops. Lost my -- the machine has crashed.

21 You see, you recognize this figure from the record of
22 decision?

23 A Yes.

24 MR. GROSSBART: And, Your Honor, we're having
25 technical problems here.

1 (Discussion off the record.)

2 BY MR. GROSSBART:

3 Q All right. You recognize this, Mr. Sullivan, as a figure
4 that the EPA put in, both in its record of decision and, I
5 think, even going back to 2004? The same figure is in the
6 feasibility study that they did? You recognize that, right?

7 A I do.

8 Q And there are four green areas depicted on this?

9 A Yes.

10 Q And the one on the lower right is the main tank farm
11 area? We're all good so far, right?

12 A Yes.

13 MR. GROSSBART: All right. So, Neil, go to 469,
14 page 2.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. GROSSBART:

17 Q And that same green area, you would agree with me, would
18 you not, is, if not exactly, certainly approximately where we
19 have the green dotted area here?

20 A Yes.

21 Q Right?

22 A Yes.

23 Q Okay. And the basin where the red dot is is outside that
24 area?

25 A That's correct.

1 Q All right. You drilled down, drained the water. You
2 chopped up the concrete, which was 6 inches thick at that
3 point, took a soil sample, and it registered for perc --

4 A Yes.

5 Q -- right?

6 And was that saturated soil or unsaturated soil at that
7 point?

8 A Likely unsaturated.

9 Q Do you know?

10 A Well, conceivably it could be saturated if it was
11 leaking. I believe it was unsaturated.

12 Q Okay.

13 A It's definitely above the water table.

14 Q Well, you do believe that that basin was leaking perc
15 into the area immediately below it, don't you?

16 A There was perc underneath that concrete, yes.

17 Q And when you dug up the concrete in this basin, which
18 appears for the first time in 1987 -- we saw that photo --
19 there was no liner underneath that concrete, was there?

20 A No, there wasn't.

21 Q All right. And concrete is not going to hold back water
22 forever in a little wastewater swimming pool like this, is it?

23 A No.

24 Q The water is going to go through it?

25 A Yes.

1 Q There's going to be cracks, *et cetera*? That's just to be
2 expected?

3 A It happens.

4 Q Expected and intended, you might say, right?

5 A It happens.

6 MR. LYNCH: Objection. Calls for legal conclusion.

7 THE COURT: Sustained.

8 BY MR. GROSSBART:

9 Q Did you report Exhibit 4811, although I'm sure it wasn't
10 called that then, your April 28, 2003 report -- why don't you
11 put that back on, Neil.

12 DOCUMENT TECHNICIAN: (Complied with request.)

13 BY MR. GROSSBART:

14 Q Did you give this to the EPA or the Montana DEQ?

15 A I don't know if it ever was -- I didn't ever give it to
16 them, no.

17 Q You did not?

18 A No.

19 Q Isn't it a fact that -- don't you understand, as an
20 engineer -- by the way, are you a licensed engineer?

21 A A P.E., no.

22 Q Do you have any licensure from the State of Montana?

23 A No, I don't.

24 Q All right. Well, do you understand -- so you say you're
25 an engineer. That's because you say so, or what makes you an

1 engineer?

2 A I have a degree in engineering. That's why.

3 Q Okay. But not a license?

4 A Correct.

5 Q Okay. Do you understand that -- well, you certainly
6 understood in 2003 that this was a Superfund site, correct?

7 A That's correct.

8 Q And aren't you, as a matter of state and federal law, at
9 least as you understand it, obligated to turn sampling results
10 such as these over to EPA and/or the Montana Department of
11 Environmental Quality?

12 A No.

13 MR. LYNCH: Calls for legal conclusion. Objection.

14 MR. GROSSBART: I'm just asking for his
15 understanding, Your Honor.

16 THE COURT: I didn't hear. Was there some
17 objection?

18 MR. LYNCH: My objection is it calls for legal
19 conclusion.

20 THE COURT: Overruled.

21 BY MR. GROSSBART:

22 Q You don't? You're not obligated to turn over results
23 to --

24 A I don't believe so.

25 Q Right. And didn't you testify on direct examination that

1 you turned over all of your results?

2 A These samples were collected for a construction project,
3 or a proposed construction project, not as part of the
4 environmental investigation.

5 Q Well, whatever the reason for taking the samples, you
6 took them during the time when there was an ongoing EPA and
7 MDEQ investigation, correct?

8 A Correct.

9 Q And there was an ongoing EPA/MDEQ investigation into,
10 among other things, perchloroethylene contamination? You knew
11 that, too, right?

12 A That's correct.

13 Q And you found perchloroethylene contamination?

14 A Yes.

15 Q Right. You didn't think that might be a little bit
16 relevant to the EPA or the MDEQ?

17 A It was consistent with what had been seen there before,
18 and it was for a whole different purpose.

19 Q Well --

20 A What we were looking for was to see how we would be able
21 to dispose of the soils if they expanded the tank farm.

22 Q I understand that, but did you not, did you not at least
23 consider the fact that your discovery of perchloroethylene
24 outside an area that had been or ultimately would be
25 delineated by the EPA as a source area might be relevant to

1 them in finalizing their work? That did not occur to you?

2 A It was within the contaminated area, and it was
3 consistent, so --

4 Q All right. So that area is contaminated, too?

5 A Correct.

6 Q So actually what you're telling me -- would you put the
7 ROD figure back up there, Neil? It's Exhibit 3059-121.

8 DOCUMENT TECHNICIAN: (Complied with request.)

9 BY MR. GROSSBART:

10 Q So really, then, what you're telling me is, at least in
11 the main tank farm, this figure, as it delineates in green,
12 understates the contamination?

13 MR. LYNCH: Objection. Calls for expert opinion.

14 THE COURT: Well, I am going to overrule it.

15 BY MR. GROSSBART:

16 Q Does it underestimate the area of source in the main tank
17 farm, in your -- based upon your work? I know you're not an
18 expert. Based upon your work?

19 A Yes.

20 Q It's understated? There's more there than the EPA
21 depicted in this photo or diagram?

22 A Possibly, yes. Probably, yes.

23 Q All right. Among other things, confirmed by, if nothing
24 else, the report you did not give to the EPA or the MDEQ?

25 A Sure.

1 Q Now you talked about some photos that you had over the
2 course of time when you did your work, and you made it a point
3 on direct examination to tell us that you did not have
4 Exhibit 2533, the 1975 photo that somebody had labeled with a
5 ditch. Right?

6 A Yes.

7 Q Isn't it a fact that at least by early 2003, you had
8 photos from 1959, 1969, 1971, 1974, 1973, 1972, and 1978; and
9 beyond, but I'll focus on those. That's all true, isn't it?

10 A We had one that was labeled -- all the rest, yes. The
11 '78 one was labeled '78, but it turned out not to be '78.

12 Q It turned out. Okay. And that was the '73 photo, so
13 I've got them all right except 1978? I amend that to read
14 1973.

15 A I believe so.

16 Q You had all those photos?

17 A I believe so.

18 Q Right.

19 A Without looking at the list, that sounds right.

20 Q And you had known all along about the natural slope of
21 the property from southeast to northwest because you told me
22 that a few minutes ago, right?

23 A Yes.

24 Q And so for you, the clincher was 2533? Is that what
25 you're telling the ladies and gentlemen of the jury?

1 A The clincher for what?

2 Q Understanding -- let me withdraw the question.

3 Did Exhibit 2533, did you mean to tell us in direct
4 examination that Exhibit 2533 told you something you did not
5 already know?

6 A Yes.

7 Q And whatever that is, you, with all your training, you
8 couldn't glean that from all of the interviews you had done
9 and all of the photos you already had and what you knew about
10 the topography; is that right?

11 A That's correct. There was never a photo that showed a
12 pathway that we could see to get from that area down to the
13 northwest corner.

14 Q So you couldn't see that pathway in any of those other
15 photos?

16 A That's correct.

17 Q And all of the old, long-time employees who had been
18 working there back in the '70s who you had spoken with,
19 basically their own backyard, did not give you that
20 information, either?

21 A I only spoke with a couple of them, and none of them
22 reported a ditch there, no.

23 Q One of them was Mr. Colver, though, right?

24 A I believe it might have been.

25 Q As a matter of fact, you know he was deposed in the Weiss

1 case. You read his deposition?

2 A Oh, I've read several depositions. I read more
3 depositions than I interviewed folks.

4 Q All right. I'm glad you mentioned that. Because in the
5 Weiss case, which was another lawsuit, you did a report that
6 was provided by the lawyers at the time representing Soco or
7 Brenntag. You did a report for them that they provided to the
8 other side to defend Brenntag in that case --

9 A Yes.

10 Q -- do you recall that?

11 That was March of 2003.

12 A Yes.

13 Q And by that time, in order to do that work, you prepared
14 yourself for doing that work by reading a lot of depositions.

15 A Yes.

16 Q And a lot of depositions were taken in that case over
17 2001 and 2002. They were given to you, and you scoured them?

18 A I read them, yes.

19 Q And you had the photos, and you had all that testimony.

20 A Yes.

21 Q As of 2003, right?

22 A That's correct.

23 Q Isn't it a fact that, in your report in that case, you
24 opined, in a way that you expected to testify to in court,
25 that had there been any kind of spill or release in the

1 loading and unloading area of the plant, it would have flowed
2 to the catch pond?

3 MR. LYNCH: Objection. Foundation. Show the
4 witness the document.

5 THE COURT: Overruled.

6 BY MR. GROSSBART:

7 Q Didn't you say that?

8 A Every air photo that I had reviewed --

9 Q Sir, I just asked you if you said that in your report.

10 A Oh. Yes, I did say that.

11 Q Now you testified in direct about how you worked closely
12 with the EPA and weren't trying to hold anything back and so
13 forth. Do you remember that?

14 A Yes.

15 Q All right. Well, putting aside Exhibit 4811, which you
16 didn't give them, isn't it a fact that on several occasions
17 you expressed in writing to the EPA that you believed that
18 they were being biased and unfair towards Soco?

19 A I don't think I ever used any words like "biased" or
20 "unfair," no.

21 MR. GROSSBART: Exhibit 4516. Any objection?

22 MR. LYNCH: Can I see it?

23 MR. GROSSBART: Would you put up 4516, please?

24 DOCUMENT TECHNICIAN: (Complied with request.)

25 MR. GROSSBART: I think there's no objection to this

1 written down, but --

2 THE CLERK: Is it admitted?

3 MR. GROSSBART: It's not admitted, but before I
4 display it to the witness, I want to be sure we have --

5 MR. JOHNSON: There's no objection.

6 MR. MICKELSON: There's no objection.

7 MR. LYNCH: We don't have objection, Your Honor.

8 THE COURT: 4516 is admitted.

9 (Exhibit 4516 was received in evidence.)

10 MR. GROSSBART: All right. Neil, please put up
11 page 3, third full paragraph. Please yellow the first
12 sentence only.

13 DOCUMENT TECHNICIAN: (Complied with request.)

14 BY MR. GROSSBART:

15 Q I'll paraphrase it to save time: The RI is not focused
16 on identifying additional sources at the site but, rather,
17 appears to be biased and incomplete, focusing primarily on
18 Brenntag and Beall. That's what you said.

19 A I think we're using "biased" in two different contexts.

20 Q All right. Well, maybe so, but you said "biased"?
21 Right?

22 A I used "bias" in a completely different context than what
23 you're using it as.

24 Q All right. In your Weiss report that you did in that
25 case, you said that the MDEQ's investigations were flawed. Do

1 you recall saying that?

2 A I do.

3 Q Okay. Does that mean the same as "biased," or is that a
4 little hotter --

5 A No.

6 Q -- if you will?

7 A "Biased," here the discussion was where the sampling
8 ports are. It's a spatial description. "Flawed" is
9 completely different.

10 Q "Flawed" is worse?

11 A Yeah.

12 Q Okay. Now you, I think, testified on direct that
13 sometime around 2003, you, on behalf of Soco, proposed to the
14 regulatory agencies that Soco be allowed to commence what you
15 refer to as a full-scale ozone sparge/soil vapor extraction
16 project.

17 A Yes.

18 Q And they told you no, right, the EPA, the regulatory
19 agencies?

20 A Yes, they did.

21 Q And they told you no because they thought that would make
22 things worse or more difficult to control, right?

23 A They said that there was a concern that it could cause
24 spreading of contamination.

25 Q That's their technical way of saying it could make things

1 worse rather than better for the area in question, right? You
2 understood that?

3 A That was a technical disagreement between us and the EPA.

4 Q Yeah, I understand it was an agreement. And you thought
5 it would make things better, and the EPA and the Montana
6 Department of Environmental Quality thought, on balance, it
7 would make things worse, correct?

8 A Yes.

9 Q Okay. And then you did your soil-vapor-extraction-only
10 project on the Dyce property, or Soco property. Right?

11 A Yes.

12 Q And that's where you, through almost a vacuuming-like
13 process, sucked vapor out of these 11-feet-deep trenches that
14 were cut into the ground at the facility?

15 A No.

16 Q Well, it involves 11-foot-deep trenches cut into the
17 ground?

18 A It involves it, yes.

19 Q And there's piping put in those trenches?

20 A At the top of those trenches, yes.

21 Q And the piping is designed to collect vapor?

22 A That's correct.

23 Q And through a mechanical process, I don't want to get too
24 complicated here, the vapor is collected, and contaminants are
25 removed via this piping?

1 A Yes.

2 Q Okay. And while the EPA and MDEQ allowed that to go
3 forward, isn't it a fact that they never approved it? They
4 never put their seal of approval on that, right?

5 A They didn't seal-approve anything all over the site.
6 They sent out a letter right at the beginning of the project,
7 of it becoming -- I don't even believe it was a Superfund site
8 yet. It may have been. It was right at probably 2000, 2001.
9 It said they'll review work plans, but they would not approve
10 anything, and that applied to everybody across the site, not
11 Brenntag or Beall, anybody who did assessment.

12 Q And late in the game, in 2004, they gave you a letter to
13 that effect, specifically with regard to your soil vapor
14 extraction project only. Do you recall that?

15 A That's correct.

16 Q They said, "Do what you want, but we're not approving
17 it"?

18 A Yes.

19 Q I think you testified earlier on direct examination that
20 you understood, based upon your communications with EPA and
21 Montana DEQ, that within the boundaries of Soco's property
22 proper, you were free, as ATC and then Secor before that, to
23 sample wherever you wanted?

24 A That's correct.

25 Q And had you wanted to drill a sample location on wherever

1 it is you thought this ditch was, nothing by way of the EPA or
2 Montana Department of Environmental Quality prevented that
3 from happening, correct?

4 A Correct.

5 MR. GROSSBART: I have nothing further.

6 THE COURT: Any redirect?

7 MR. LYNCH: Yes, Your Honor, briefly.

8 REDIRECT EXAMINATION

9 BY MR. LYNCH:

10 Q Mr. Sullivan, I believe on your direct examination you
11 testified that during the course of your work connected with
12 the Dyce Chemical site, you had been in communication with and
13 sharing information with Soco's insurance companies; is that
14 correct?

15 A That's correct.

16 Q And for how many years have you been doing that?

17 A Since before we even started. We shared what we had
18 found before we started drilling, information from interviews,
19 so that would have been from late 2001. Or, no, even before
20 that. Mid 2001.

21 Q And, more recently, you even showed their experts around
22 the Dyce Chemical site; is that correct?

23 A That's correct.

24 Q In all those years, has anyone from the insurance company
25 requested that any additional sampling be conducted on the

1 Dyce Chemical site?

2 A No.

3 Q I direct your attention to, admitted now, Exhibit 4440.

4 Pull that up please, Julianne.

5 DOCUMENT TECHNICIAN: (Complied with request.)

6 MR. LYNCH: I'm sorry. 4400.

7 DOCUMENT TECHNICIAN: (Complied with request.)

8 BY MR. LYNCH:

9 Q Mr. Sullivan, this, again, is the comments to MDEQ that
10 attached your soil vapor extraction plan.

11 I want to direct your attention -- would you go to
12 page 40 of that exhibit, please? And pull out paragraph 3.4.

13 DOCUMENT TECHNICIAN: (Complied with request.)

14 BY MR. LYNCH:

15 Q Mr. Sullivan, this is the paragraph Mr. Grossbart just
16 showed you, suggesting that the system was pulling VOCs from
17 the saturated zone. I direct your attention to the sentence
18 in the middle where it states, "It is believed that initially
19 volatilization of dissolved constituents contributed to the
20 high mass removal rate observed at startup."

21 Why the qualification using the term "initially"?

22 A Because only at startup do you see that effect. When you
23 first dig these trenches and put these pipes in, you're
24 exposing the fresh groundwater surface at the full
25 concentration of the dissolved phase. As soon as you start

1 that up, you start transferring mass from that very top level,
2 and you see that in your, in your off-gas. But the mass
3 transfer rate between -- what we call the mass transfer rate,
4 but really it's the rate that CVOCs will transfer from being
5 dissolved to bubble, to come out of solution, is really low,
6 so it's only a short period of time, and it only affects the
7 very top of the water table.

8 Q Okay. I direct your attention to page 19 of that same
9 exhibit.

10 A And could you enlarge the chart on that, please,
11 Julianne?

12 D^OC^MU^NT^E C^HE^T N^IC^IC^AN: (Complied with request.)

13 BY MR. LYNCH:

14 Q And, Mr. Sullivan, that chart is labeled, "Comparison of
15 Remedial Alternatives for the Brenntag Operation Unit." Is
16 that a comparison of what DEQ was proposing at the time and
17 what you were proposing?

18 A Yes, it is.

19 Q In the row for northwest corner source area, you're
20 proposing SVE trenches for vadose zone and something else for
21 the saturated zone; is that correct?

22 A That's correct.

23 Q And in the tank farm source area, both you and DEQ are
24 proposing soil vapor extraction for the vadose zone but
25 something different for the saturated zone; is that correct?

1 A That's correct.

2 Q Is that because soil vapor extraction is not a viable
3 method to remove chlorinated solvents from the saturated zone?

4 A Not by itself.

5 MR. GROSSBART: That's clearly asking for an expert
6 opinion.

7 THE COURT: Overruled, but I'm having a hard time
8 seeing the exact relevance of this.

9 MR. LYNCH: Go to page 49 of this exhibit, please.

10 DOCUMENT TECHNICIAN: (Complied with request.)

11 BY MR. LYNCH:

12 Q Mr. Sullivan, Mr. Grossbart was asking you about what was
13 removed during the soil vapor extraction. Is this a chart
14 indicating the mass of chlorinated solvents that you had
15 removed via that system?

16 A Yes, it is.

17 Q And how did you measure those amounts?

18 MR. GROSSBART: Objection. Irrelevant and expert
19 opinion, and I did not go into this.

20 THE COURT: Sustained.

21 BY MR. LYNCH:

22 Q Mr. Sullivan, Mr. Grossbart asked you about a few
23 statements you had made in your expert report in the Weiss
24 action.

25 And, Julianne, could you please pull up that report? But

1 let's not show it to the jury. I'm sorry; it's 2551.

2 DOCUMENT TECHNICIAN: (Complied with request.)

3 BY MR. LYNCH:

4 Q And although Mr. Grossbart --

5 THE CLERK: Don't want it.

6 BY MR. LYNCH:

7 Q -- didn't show you this report during the direct, is this
8 the expert report --

9 THE CLERK: We don't want it.

10 THE REPORTER: I'm sorry; hang on just a minute.

11 THE CLERK: We don't want it to the jury.

12 THE REPORTER: Your question again?

13 BY MR. LYNCH:

14 Q Okay. Although Mr. Grossbart didn't show you your actual
15 report during the direct, is this the report that you were
16 speaking about?

17 A (No response.)

18 MR. LYNCH: Go to page 2, please, Julianne.

19 MR. GROSSBART: Your Honor, this was objected to.

20 They objected to this coming into evidence. I impeached him
21 with it. Now he's --

22 MR. LYNCH: -- rehabilitating him at the same time.

23 MR. GROSSBART: Well, is it being shown? Is it in
24 or is it out?

25 MR. LYNCH: No, we don't want it shown to the jury.

1 This is just so he has it.

2 (Discussion off the record at counsel table.)

3 MR. GROSSBART: I still don't think it's proper. If
4 he wants to refresh his recollection with the exhibit, that's
5 one thing, but --

6 THE COURT: Well, I don't -- did you use it?

7 MR. GROSSBART: I used it. I used it in the sense
8 that, "Isn't it a fact that you said in the *Weiss* case" -- X,
9 Y, Z.

10 THE COURT: Impeached, or at least that's what the
11 purpose was.

12 MR. GROSSBART: Correct. Yes, Your Honor.

13 THE COURT: I'll allow it. You're going to try and,
14 if there was impeachment, rehabilitate him?

15 MR. LYNCH: Yes, Your Honor.

16 THE COURT: Go ahead.

17 MR. LYNCH: Go to page 21 of the exhibit, please,
18 Julianne.

19 DOCUMENT TECHNICIAN: (Complied with request.)

20 BY MR. LYNCH:

21 Q Mr. Sullivan, Mr. Grossbart asked you generally whether,
22 in your report, you stated that all releases and spills from
23 the site would flow to the catch pond. I direct your
24 attention to the first bullet point on that page under the
25 heading "Other Potential Sources." Do you see where I'm

1 referring to?

2 A Yes.

3 Q Isn't it a fact that what you actually said was the
4 former catch pond located in the northwestern portion, or
5 where rinseate from spills and leaks at the tank farm and
6 unloading and drumming areas was routed --

7 MR. GROSSBART: Your Honor, he's not allowed to do
8 it that way, by leading him, by reading it.

9 THE COURT: Sustained.

10 Show it. Have him read it and ask him if it
11 refreshes his recollection.

12 BY MR. LYNCH:

13 Q Does this refresh your recollection as to what you
14 actually said?

15 THE WITNESS: Yeah. Can you zoom that? I can't see
16 it here very good on here. Please.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 THE WITNESS: Yes, it does.

19 BY MR. LYNCH:

20 Q Okay. And did you say that, throughout the entire
21 history of this site, spills and releases would flow to the
22 catch pond?

23 MR. GROSSBART: That's just what you sustained.

24 THE COURT: Well, have the witness testify.

25 ///

1 BY MR. LYNCH:

2 Q What did you actually say about releases going to the
3 catch pond?

4 A That from all of the air photos that we had, we couldn't
5 see a pathway that anything released in that area would get
6 past the catch pond.

7 Q Okay. And you cite two sources for the statement on the
8 first bullet point of this; isn't that correct?

9 A Yes.

10 Q And what were the sources?

11 A Two depositions. One was Marvin Johnson, and one was, I
12 think, Richard, was his first name, Brill.

13 Q And are those employees that worked at the Dyce site
14 during the '70s?

15 A Yes.

16 Q The '70s?

17 A I believe so, yes.

18 Q Okay. The record . . .

19 Directing your attention to Exhibit 4811 -- may I
20 approach the witness and give him a hard copy?

21 THE COURT: Yes.

22 BY MR. LYNCH:

23 Q (Handing.) Mr. Sullivan, this is the letter with the
24 reports of the sampling you conducted in the tank farm area of
25 the Dyce site that Mr. Grossbart showed you; is that correct?

1 A That's correct.

2 Q And the soil samples you took were near and beneath the
3 concrete tank farm; is that correct?

4 A That's correct.

5 Q And, again, one of the samples you took was of the
6 concrete at the very bottom of the tank farm containment; is
7 that correct?

8 A That's correct.

9 Q And this was a walled structure that captured water
10 spills and runoff from the operations area?

11 A Yes.

12 Q And at the times you were out at the site, had you
13 observed whether it contained water?

14 A I believe, every time I ever saw it, it had water in it.

15 Q So, in essence, this was a concrete catch pond; is that
16 correct?

17 A This was their catch pond for stormwater and drips and
18 spills.

19 Q Okay. And the test you took was from the very bottom of
20 that catch pond?

21 A That's correct.

22 Q And what were the results of that test?

23 A The sample that was underneath that first soil right
24 underneath was typical of what had been seen in that area
25 before, the distributor's profile. It had a bunch of BTEX and

1 some perc and, I believe, some TCE.

2 Q And what about the sample of the concrete itself?

3 A Yes. It had perc and, I believe, the rest of the
4 distributor profile.

5 Q So the sample you took from the bottom of this catch pond
6 contained all of those constituents? It wasn't just
7 pure-phase perc?

8 A Oh, no.

9 Q So it was not the same as the contamination you found in
10 the northwest corner; is that correct?

11 A Substantially different. It's consistent with what's in
12 that area.

13 MR. LYNCH: No further questions.

14 THE COURT: Okay. He can step down.

15 Call your next witness.

16 MR. COZZENS: Soco will next call Richard Colver,
17 Your Honor.

18 WHEREUPON,

19 MR. RICHARD ALLEN COLVER,
20 called for examination by counsel for defendant, after having
21 been first duly sworn to testify the truth, the whole truth,
22 and nothing but the truth, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. COZZENS:

25 Q Good morning, Mr. Colver. Would you state your full name

1 and address for the record, please?

2 A Pardon? I couldn't hear you.

3 Q I'll try to speak up and more directly into the
4 microphone.

5 Would you state your full name and address for the
6 record, please?

7 A Richard Allen Colver, and I live at Boyd, Montana.

8 Q Are you nervous?

9 A Yes.

10 Q Okay. I'll try to go slow and make sure you can hear me,
11 and soon you won't be, okay?

12 Where did you grow up?

13 A Around Bozeman, Manhattan and Bozeman.

14 Q Have you lived in Montana primarily all of your life?

15 A All but ten years of my life.

16 Q Okay. Were you ever employed out at Dyce Chemical?

17 A Yes, sir.

18 Q How did you get that job?

19 A Well, I was out of work, and I knew Mr. Dyce previously,
20 and I saw him one day and asked if he had a job out there, and
21 he hired me.

22 Q How did you know Mr. Dyce?

23 A Through our church.

24 Q When did you first go to work out at Dyce?

25 A In October of 1974.

1 Q And what was your first position?

2 A Working in the warehouse.

3 Q Had you ever worked for a company that distributed
4 chemicals prior to October of '74?

5 A No.

6 Q Was there a training program when you first went to work
7 at Dyce?

8 A Yes. We were to work with an experienced employee from
9 three to six months, depending on the individual.

10 Q Do you recall how long you were supervised or in that
11 training period?

12 A Probably closer to the six months.

13 MR. COZZENS: All right. Could we pull up Admitted
14 Exhibit 5017, please?

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. COZZENS:

17 Q Can you see that exhibit okay, Mr. Colver?

18 A Yes, sir.

19 Q Okay. This is an aerial photograph of the -- well, let
20 me ask you. What does this show?

21 A It shows the Dyce Chemical location.

22 Q As of June 18 of 1974?

23 A Yes.

24 Q Is that basically what it looked like when you first went
25 to work in October?

1 A Yes.

2 MR. COZZENS: Could you blow up the area from south
3 of the lower warehouse through the top of the berm, please?

4 DOCUMENT TECHNICIAN: (Complied with request.)

5 THE WITNESS: South of the lower warehouse --

6 BY MR. COZZENS:

7 Q I've asked Julianne to blow that up so we can see it
8 better.

9 Okay. Are you touching the screen?

10 A Yes.

11 Q Okay. That's why those marks are coming on there.

12 A Oh.

13 Q I may ask you to do that, but let's wait until we've got
14 something to be identified.

15 A Okay.

16 Q Can you locate on that photograph now the lower
17 warehouse?

18 A It would be right here.

19 Q Okay. And you actually put a mark that's somewhat east
20 of the building itself; is that correct?

21 A Yes.

22 Q Okay. If I circled this area here, is that the lower
23 warehouse?

24 A Yes.

25 Q Okay. And can you see the cement apron that goes east of

1 the lower warehouse?

2 A Right here.

3 Q Okay. Was that apron still in existence when you went to
4 work in October of '74?

5 A Yes.

6 Q Did that apron continue to be there in the same
7 configuration, at least through 1987?

8 A Yes.

9 Q I should have asked this before. How long did you work
10 out at Dyce?

11 A For 20 and a half years.

12 Q Okay. When did you retire?

13 A April 30, 1995.

14 Q Did your positions or your job duties change during those
15 20 years?

16 A Yes.

17 Q What happened?

18 A They advanced me to maintenance man instead of a straight
19 warehouse.

20 Q And when did that occur?

21 A Probably about 1976 or '77.

22 Q Okay. And what were your duties as the maintenance man?

23 A To keep things in repair.

24 Q Would that include keeping the tank farm in repair?

25 A Yes.

1 Q The exterior of the lower warehouse?

2 A Yes.

3 Q Can you describe for the jury how fluids would drain on
4 that apron that you've seen on the east side of the lower
5 warehouse?

6 A They have that on the map, too. It drained down the
7 northeast corner, and it comes down around the warehouse and
8 goes down the ditch and clear out on the northwest corner of
9 the property.

10 Q Okay. In this photo that we're looking at in 1974, can
11 you tell whether the berm that ultimately existed around the,
12 around the tank farm, was that completed at that time in 1974?

13 A I believe it was.

14 Q You think it was? Okay.

15 Now let me do this, because I want to make sure I get
16 this in the record. So you're saying that fluids would drain
17 northeast and then come down and then go along the north side
18 of the lower warehouse? Is that correct?

19 A Yes.

20 MR. COZZENS: Can we switch, then, to Exhibit 5019?

21 DOCUMENT TECHNICIAN: (Complied with request.)

22 BY MR. COZZENS:

23 Q Can you tell us what 5019 depicts, please?

24 A There again, the Dyce facilities.

25 Q All right. Do you see, on that photograph, what was

1 known as the drumming shed?

2 A Yes.

3 Q Can you locate that for us, please?

4 A Right here.

5 Q Okay.

6 A I get to shaking.

7 Q That's okay. There's a -- you put a mark that's
8 immediately south and east of a building. Is the building the
9 drumming shed?

10 A Yes.

11 Q All right. Was that drumming shed completed when you
12 first went to work?

13 A No.

14 Q Did you have any involvement in building that drumming
15 shed?

16 A Yes.

17 Q What was your involvement?

18 A I helped build it.

19 Q Okay. Was the -- tell me about the construction. What
20 was the floor in the drumming shed?

21 A It was cement.

22 Q What was the purpose of the drumming shed?

23 A To give us shelter when we were drumming.

24 Q Okay. And what does "drumming" mean?

25 A When we were filling drums with product.

1 Q How did that occur in 1975 and 1976?

2 A Repeat the question again.

3 Q How did you accomplish drumming in 1975 and 1976?

4 A We'd have to hook up a pump from our tanks and hoses, and
5 then you had a valve right at the drum, or on the end of the
6 hose, and we'd fill the drum on a scale.

7 Q Okay. And can you tell us how the cement floor in the
8 drumming shed drained?

9 A It drained off to the west.

10 Q Okay. So where would it actually exit the drumming shed
11 if there was moisture or fluids of any kind on the floor?

12 A On this west end.

13 I really draw pictures.

14 Q You're saying it came out the west end?

15 A Yes.

16 Q How did it do that? Was there a wall on the drumming
17 shed?

18 A The wall didn't come clear down to the cement on the west
19 end so that there was a drainage area underneath the wall.

20 Q Okay. So there was a -- the floor of the drumming shed
21 sloped so that fluids would drain right underneath that space
22 that was left in the west wall?

23 A Yes.

24 Q Am I marking correctly the west wall?

25 A Yes.

1 Q Okay. What was immediately west of the drumming shed?

2 What was the ground like there?

3 A It was dirt and gravel.

4 Q Okay. It wasn't asphalt there?

5 A No.

6 Q Was the berm that went around the tank farm, did that --
7 how far did that extend on the south side?

8 MR. JOHNSON: What period of time?

9 MR. COZZENS: In this picture, 1975.

10 THE WITNESS: They went clear behind the drumming
11 shed.

12 BY MR. COZZENS:

13 Q Okay.

14 A On the north side of the drumming shed.

15 Q Can you locate on this picture the loading and unloading
16 area?

17 A It would be right in here.

18 Q All right. And what was the surface of the loading and
19 unloading area made of?

20 A It was asphalted in about 1976, I believe it was.

21 Q Well, why don't you take --

22 A Or 1975.

23 Q Why don't you take a close look at this photo, which is
24 dated November 4, 1975. Can you see the area that Dyce
25 asphalted at the site?

1 A Yes.

2 Q Okay. Can you kind of roughly show the outlines of the
3 asphalt that they put down?

4 A They came in here and around, and they're down -- whoops.
5 Down around in front of the drumming shed.

6 Q Okay.

7 A Clear to the lower warehouse.

8 Q All right. So the dark areas that you can see on this
9 photograph were new asphalt that Dyce had laid after they
10 bought the premises, correct?

11 A Yes.

12 Q Okay. And that included the loading and unloading area?

13 A Yes.

14 Q Did you ever -- were you aware of anything where they
15 would do, I'll call it, mass drumming and, therefore, they
16 didn't do it inside the drumming shed?

17 A I don't remember on that.

18 Q Okay. And did that new asphalt that was laid, did that
19 go up to the cement apron that you looked at in the last
20 photograph?

21 A Yes.

22 Q Now, then, as of November 4 of 1975, I would like, if you
23 would, please, to tell, in general, how or where fluids that
24 were inside the berm, inside the containment berm, would go,
25 how it would drain.

1 A From inside?

2 Q From inside the containment berm, yes.

3 A They would go down inside the berm, clear down to the
4 northwest corner.

5 Q Of the --

6 A Of the --

7 Q Of the berm area.

8 A Of the berm area, yes.

9 Q And what was in that northwest corner of the berm area?

10 A A catch pond.

11 Q Okay. Where would fluids that found their way into the
12 drumming shed or west of the drumming shed or into the loading
13 and unloading area, where would those drain to?

14 A They would drain out to the north of the lower warehouse,
15 down along the railroad tracks and out into the northwest
16 corner of the property.

17 MR. COZZENS: Okay. Can you blow up that area
18 that's just immediately south and west of the tank farm,
19 please? And include the tank farm, too.

20 DOCUMENT TECHNICIAN: (Complied with request.)

21 BY MR. COZZENS:

22 Q Okay. Can you see in this photograph that has now been
23 blown up the drainage ditch that would drain materials from
24 the loading and unloading area and from the drumming shed?

25 A Yes. That would be this ditch here. It come down from

1 the drumming shed here.

2 Q Okay. Thank you.

3 Now did Dyce have a bulk tank for perc?

4 A When, Larry?

5 Q When did they first have a bulk tank for perc that you
6 can recall?

7 A About 1975.

8 Q Okay. Do you know whether you can locate where that bulk
9 perc tank is on this photograph?

10 A I'm not sure, but I think it's one of these here.

11 Q Are you talking about one of these tanks that I've
12 circled now?

13 A Yes.

14 Q All right. Thank you.

15 And those are what appear to be horizontal tanks east of
16 the six vertical tanks; is that correct?

17 A Yes.

18 MR. COZZENS: All right. Could you go back to the
19 full photograph? Can we go to Admitted Exhibit 5024, please?

20 DOCUMENT TECHNICIAN: (Complied with request.)

21 BY MR. COZZENS:

22 Q This is an aerial photograph of the site as it existed in
23 September of 1977. Can you locate on that photograph the perc
24 bulk storage tank?

25 A It was these three here, the one on the far left.

1 Q All right. Let me just do this. Can you describe it in
2 words, where it's located, in relation to the drumming shed?

3 A It's located just north of the drumming shed.

4 Q Are you referring, sir, to these three tanks that I've
5 just delineated with my markings?

6 A Yes.

7 Q It's one of those three?

8 A Yes.

9 Q Do you recall how big the perc tank was?

10 A 1,500 gallons.

11 Q Can you locate the catch pond on that photograph?

12 A The catch pond would be right down in here.

13 Q Okay. You've pointed to it. Thank you.

14 And that's in the northwest corner of the containment
15 area, right?

16 A Yes.

17 Q Was the catch pond lined?

18 A Yes.

19 Q Do you know how it was constructed?

20 A It had a dirt berm around it, and then --

21 Q I'm sorry; it had a what, sir?

22 A It had a dirt berm, and then they put a plastic liner in
23 it. I believe, over top of the liner, that they had put
24 bentonite down.

25 Q Okay. Can you tell the jury what bentonite is?

1 A Bentonite is a type of soil that repels water.

2 Q Okay. Did you ever actually see the lining of the catch
3 pond as it was configured in 1975 and 1977?

4 A Yes. The wind and rain would wash some of the dirt down
5 off the bank, and you could see the liner there.

6 Q Okay. What, if anything, did Dyce do about the exposure
7 of that tarp?

8 A They had gunnite sprayed on it.

9 MR. JOHNSON: Objection, Your Honor. He used the
10 word "tarp," and the witness has said "plastic liner." I
11 think it misstates the testimony.

12 MR. COZZENS: I'll change it, Judge.

13 THE COURT: Yeah. Is it plastic or is it --

14 MR. COZZENS: I think, I think it's a plastic tarp,
15 but I'll let him tell us.

16 THE COURT: Go ahead.

17 BY MR. COZZENS:

18 Q Go ahead and tell us what the liner was, to the best of
19 your knowledge.

20 A A plastic tarp.

21 Q Thank you.

22 And did Dyce do anything about the exposure of that tarp?

23 A Yes.

24 Q What did they do?

25 A They sprayed gunnite on it, and gunnite is a mixture of

1 cement.

2 Q Okay. And this is going to be hard to do, but I'm going
3 to ask if we can go back to 5021, which is a '76 photo, and
4 blow that up.

5 DOCUMENT TECHNICIAN: (Complied with request.)

6 BY MR. COZZENS:

7 Q Now we're looking at a picture in September 1976, and
8 this is a pretty fuzzy photograph. But can you locate the
9 perc bulk tank in basically the same location it was in the
10 1977 photo that we saw?

11 A Yes.

12 MR. COZZENS: Okay. Let's go back, then, to the
13 1977 photograph.

14 MR. LYNCH: What's the number for that, Larry?

15 MR. COZZENS: It's 5019? No, I'm wrong. It's 5024.
16 I'm sorry.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. COZZENS:

19 Q How would Dyce get perc into the bulk tank in 1976 and
20 1977?

21 A They used a portable pump, and from the truck to the
22 pump, they used a hose, and then from the pump to the tank,
23 another hose, and they would pump it from the truck into the
24 tank.

25 Q Okay. And where would the truck be located?

1 A In the area just south of the drumming shed.

2 Q So that would be this area right here?

3 A Yes.

4 Q Okay. And that was, in fact, referred to as the loading
5 and unloading area, correct?

6 A Yes.

7 Q All right. Did you have to take any special precautions
8 in handling perc?

9 A Well, just to be very careful not to have any spills.

10 Q Okay. Did you have to use any special equipment?

11 A We had special hoses for that.

12 Q Do you now recall what was different about those perc
13 hoses?

14 A They had a different lining inside of the hose.

15 Q Why was that?

16 A Perc, like rubber, would eat the rubber up.

17 Q Okay.

18 A And they had a Teflon or a Guylon lining in the hose.

19 Q Did you use those hoses to load or unload any other
20 chemical out at the Dyce site?

21 A No.

22 Q So those were dedicated solely to use in perc?

23 A Yes.

24 Q Okay. Now during this time period when you were loading
25 or unloading a truck, what would you do when the truck was

1 full or, you were done with it, the tank was full? What would
2 you do with the materials that were still in the hose?

3 A We would empty it into a bucket and pour that bucket into
4 a drum.

5 Q Okay. And how did you empty it?

6 A By walking the hose out.

7 Q Can you tell the jury what it means to "walk" the hose?

8 A To lift one end of the hose up, and then the other end is
9 in the bucket, and you walk down the hose, keeping it high, so
10 that the fluid drains into the bucket.

11 Q Okay. Was there, after you had walked the hoses that
12 were used, what did you do with them?

13 A The hoses were stored on a rack inside of the drumming
14 shed.

15 Q Okay. And was there any way for people to know that
16 these were hoses that were only to be used for perc?

17 A The ends, the fittings on the ends were painted, if I
18 remember right, blue, and there was a chart posted in the
19 drumming shed, showing what the blue hoses were to be used
20 for.

21 Q And what did that chart say about blue hoses?

22 A Pardon?

23 Q What did the chart say about hoses that were painted
24 blue?

25 A They were to be used only with perc.

1 Q And did you have different colors for other chemicals?

2 A Yes.

3 Q Who was in charge of making sure that those things, that
4 those hoses were painted?

5 A I was.

6 Q Okay. Can you -- well, no. I won't do that. Let me
7 move on.

8 When you were loading or unloading material from the tank
9 when you were using a portable pump, was there any material
10 left in the pump?

11 A Maybe a cupful.

12 Q And what did you do with that?

13 A That would also have been poured into a drum.

14 Q Okay. Did you ever actually observe rainwater draining
15 from the loading and unloading area during 1975 through 1980?

16 A Yes.

17 Q And what and where did it go?

18 A It went down north of the lower warehouse and turned and
19 went down clear out into the northwest corner of the property.

20 Q Okay. Now if I draw the circle here, would you describe
21 that as the northwest corner of the property?

22 A Yes.

23 Q Okay. Did Dyce own any of this property just north of
24 that?

25 A Yes.

1 Q And do you know how people started calling this the
2 northwest corner?

3 A No.

4 Q But you just know that that's what it's referred to as?

5 A It had been referred, probably called that because it was
6 the northwest corner of the property.

7 Q Well, that would be why it would be called that. I was
8 just trying to point out that, in fact, Dyce also owned some
9 property north of the, quote, northwest corner, right?

10 A Yes.

11 Q All right. But you don't know why that was called
12 northwest corner?

13 A No.

14 Q Thanks.

15 In the time that you worked out at Dyce -- well, first of
16 all, I should have asked you to describe; how did you hook up
17 these hoses that were used to load and unload materials?

18 A They had what is known as a quick coupler on the end of
19 the hose, and it fit in over top of a companion fitting, and
20 there was two arms that you closed on to lock the fitting
21 together.

22 Q Okay. In the time you worked out at Dyce, did you ever
23 see one of those quick couplers fail?

24 A No.

25 Q Did you ever see any of them come loose at all?

1 A If they got worn, they could have, but it was also my job
2 to make sure that they didn't get that worn.

3 Q Okay. So if you saw one fail, that was your problem,
4 right?

5 A Right.

6 Q Okay. Did you ever see any of the hoses leak that were
7 used to load or unload materials?

8 A Yes.

9 Q Tell me what you saw.

10 A Just a small drip. Then the fellow unloading had a
11 bucket there to catch it.

12 Q Okay. And that's something I should have asked you
13 before. What was the policy at Dyce for trying to make sure
14 that there weren't drips or small leaks that would hit the
15 ground when you were loading and unloading materials?

16 MR. JOHNSON: Your Honor, lacks foundation as to the
17 time period. He worked there for a long time.

18 THE COURT: Yes.

19 BY MR. COZZENS:

20 Q All right. Let's start with the period from 1975 to
21 1980. What was the policy?

22 A The policy was to have drip buckets under the fittings so
23 that if there was any leakage, it did not get to the ground.

24 Q Okay. Did that policy change during any of the 20 years
25 that you worked out at Dyce?

1 A No.

2 Q Okay. What was a drip bucket? Explain what that was.

3 A It was just a metal bucket to catch any drips that might
4 happen.

5 Q And what did you do with any fluids that found their way
6 to the drip bucket?

7 A That would have been poured into a drum.

8 Q All right. Were you ever involved in actually loading
9 and unloading -- let me be more precise.

10 Were you ever involved in the process of unloading
11 product that was delivered to the Dyce site in a tanker truck?

12 A Yes.

13 Q Okay. Did you observe that many times during the years
14 that you worked there?

15 A Yes.

16 Q Did the truck drivers always hang around while their
17 truck was being unloaded?

18 A No.

19 Q What would they do?

20 A They'd usually go up to the coffee room and have coffee.

21 Q Okay. So it was more frequent than not that the truck
22 driver wouldn't hang around?

23 A Yes.

24 MR. DAVIS: I object. He's leading, Judge.

25 THE COURT: Well, you know, it is leading, but I'm

1 going to allow you guys on your case to do a little leading,
2 too. It expedites things.

3 MR. COZZENS: Thank you, Judge.

4 THE COURT: When it's insignificant, I'll let it get
5 moving, so it's overruled.

6 MR. COZZENS: Thank you.

7 BY MR. COZZENS:

8 Q Was it typical for truck drivers to leave the area while
9 their truck was being unloaded at the Dyce site?

10 A Yes.

11 Q All right. Did Dyce have a policy about whether a truck
12 could be either loaded or unloaded without a Dyce employee
13 being present?

14 A The Dyce employee was supposed to always be present.

15 Q And when did you first learn that policy?

16 A When I first went to work out there.

17 Q And did that policy remain the same during the entire
18 time that you worked out at Dyce?

19 A Yes.

20 Q Okay. Did you ever see a time when somebody at Dyce
21 wasn't following that policy?

22 A Yes.

23 Q Would you tell us what happened, please?

24 A I forget the fellow's name, but he hooked up a hose for
25 hydrochloric acid and used the wrong type of hose, and it ate

1 a hole in the fitting. And I happened to be walking by at the
2 time, and I ran in and shut the valves off on the truck and
3 the plumbing up to the drumming shed.

4 Q Okay. Now was hydrochloric acid leaking from the hose or
5 the coupling?

6 A From the coupling.

7 Q Okay. Can you tell me at what rate?

8 MR. JOHNSON: Objection. Relevance, Your Honor.

9 THE COURT: Sustained.

10 MR. COZZENS: All right.

11 BY MR. COZZENS:

12 Q You're the one that had to stop that spill because there
13 wasn't a Dyce employee around; is that correct?

14 MR. JOHNSON: Objection, Your Honor. Relevance.

15 THE COURT: Sustained.

16 MR. COZZENS: Your Honor, may I be heard on that?

17 THE COURT: No. It's irrelevant.

18 MR. COZZENS: Okay.

19 BY MR. COZZENS:

20 Q Okay. How did Dyce sell perc to its customers?

21 A When I first went to work out there, it was all in drums.
22 And in later years, we had a small bulk tank that we delivered
23 to tanks at their facilities.

24 Q Okay. Where was the tote stored?

25 A Pardon?

1 Q Where was the tote? Did you say they had a small tote
2 that they delivered in?

3 A Yes.

4 Q Where was it stored?

5 A In -- there's a shed along the upper warehouse. You can
6 see it right here.

7 Q Uh-huh.

8 A It was stored in there.

9 Q And was it stored empty or full?

10 A Full.

11 MR. COZZENS: Okay. Could you pull up Exhibit 5028,
12 please?

13 DOCUMENT TECHNICIAN: (Complied with request.)

14 BY MR. COZZENS:

15 Q This is a photograph dated May 14 of 1979.

16 And could you enlarge the tank farm area that includes
17 the lower warehouse, please?

18 DOCUMENT TECHNICIAN: (Complied with request.)

19 BY MR. COZZENS:

20 Q Can you locate the perc tank that exists, the bulk perc
21 tank as it exists in this photo?

22 A Yes. It's right here.

23 Q All right. Is that the same bulk perc tank that we
24 looked at in the 1977 photo?

25 A No.

1 Q What's the difference?

2 A It's a larger tank.

3 Q And do you recall how large this tank was?

4 A 4,000-gallon tank.

5 Q When they bought or changed to the 4,000-gallon tank, did
6 they change anything else about the configuration of perc
7 storage?

8 A Unless it would be that we plumbed in a pump solid for
9 just that purpose.

10 Q Okay. Tell the jury what you did.

11 A We pumped -- plumbed the -- excuse me.

12 THE COURT: That's quite all right.

13 THE WITNESS: We run plumbing from the tank to the
14 pump, and then from the pump out to the drumming shed where we
15 could hook a hose direct from the truck to the drumming shed.

16 BY MR. COZZENS:

17 Q Okay. Then once you had done that, quote, plumbing, end
18 quote, was that pump used for anything other than perc?

19 A No.

20 Q So now you have plumbed-in lines and a dedicated pump; is
21 that correct?

22 A Yes.

23 Q And who did that work?

24 A I did.

25 Q Where was the pump located?

1 A On the north side of the drumming shed. Right in here.

2 Q Was the pump inside the drumming shed or outside?

3 A Yeah, outside.

4 Q Okay. So we're talking, then, about this area? Is that
5 where it was located?

6 A Yes.

7 Q And was part of the containment berm located in that
8 area, too?

9 A Yes. The pump sat right on top of the containment berm.

10 Q Okay. And then from the pump, where did the plumbing go?

11 A It went into the drumming shed, and there was a valve and
12 a fitting in the drumming shed that we could hook a hose to,
13 to the truck.

14 Q Do you remember the pumping capacity of the dedicated
15 perc --

16 A Sixty gallons per minute.

17 Q Okay. I was going to say "dedicated perc pump," but I
18 was too slow, and now it's 60 gallons per minute.

19 Would you call up Admitted Exhibit 5031, please?

20 Wait a minute. Don't do that. I don't know why that's
21 listed here. What I would like to go to is 5033, please.

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 MR. COZZENS: Would you blow up, in particular, the
24 area that would include all of the containment berm, please,
25 and the tank farm and the warehouses?

1 DOCUMENT TECHNICIAN: (Complied with request.)

2 MR. COZZENS: Thank you.

3 BY MR. COZZENS:

4 Q I'm showing you a photograph that's dated June 2, 1981
5 that's been admitted into evidence, and this is of the Dyce
6 site. Can you tell the jury what's different about the site
7 now than that that existed in the 1979 photo that we looked
8 at?

9 A The containment berm was enlarged to enclose a larger
10 area.

11 Q Okay. What was the area that it now enclosed?

12 A How do you mean on that?

13 Q Well, how was it enlarged?

14 A Well, they enlarged it to go around, clear around here.
15 Whoops. We've got all kinds of --

16 Q Okay. Let me see if I can undo some of this. I'm not
17 sure I know how.

18 (Discussion off the record.)

19 BY MR. COZZENS:

20 Q You're drawing along this berm area here; is that
21 correct?

22 A Yes.

23 Q Okay.

24 A And then it went on over here and up here.

25 Q All right. Did the previous berm go on the west side of

1 the railroad spur?

2 A No.

3 Q And this one does?

4 A It went to the end of the railroad spur.

5 Q The previous berm was to the east, on the east side of
6 the railroad spur?

7 A Yes.

8 Q Okay. What I'm trying to get to is do you still see the
9 ditch where fluids used to drain from the loading and
10 unloading area and from the drumming shed? Can you still see
11 that in this photo?

12 A That would be along here.

13 Q Right. Now where do those fluids go?

14 A It would still go down the same ditch, but it goes into a
15 larger containment area.

16 Q To the catch pond that we see up in this area; is that
17 correct?

18 A Correct.

19 Q Okay. And do you see another ditch leading to the new
20 enlarged catch pond?

21 A Yes. It runs through here and down into the catch pond
22 down here.

23 Q Okay. So as opposed to how it existed prior to the
24 reconfiguration in 1980, now we've got all of the fluids that
25 would come from the loading/unloading area, virtually all of

1 the asphalt, and all around the tank farm, all of that is
2 going into the new enlarged catch pond?

3 MR. JOHNSON: Objection. Lacks foundation, and it's
4 leading, Your Honor.

5 THE COURT: And it's repetitious. Sustained. We
6 already heard it.

7 MR. COZZENS: I didn't hear what you said, Judge.

8 THE COURT: It's repetitious, too. You've already
9 been over it.

10 MR. COZZENS: All right. We'll let the photo speak
11 for itself.

12 BY MR. COZZENS:

13 Q Do you know why they enlarged the catch pond at that
14 time?

15 A To keep, contain anything that came off of the loading
16 area and parking lot.

17 Q Okay. During the period from 1975 to 1980, how many
18 workers were typically out at the Dyce site?

19 A Three in the warehouse.

20 Q Were there ever any times when there would only be one
21 employee available to load or unload a truck?

22 A Yes.

23 Q How could that occur?

24 A If two employees happened to be out on deliveries at the
25 same time.

1 Q Okay. Did Dyce ever load or unload trucks after hours?

2 A Yes.

3 Q How would that occur?

4 A One of us would be called out to do the work.

5 Q And that would be another circumstance where only one
6 person was on the premises?

7 A Yeah, one Dyce employee and a truck driver.

8 Q All right. Okay.

9 Did you ever witness something occur out at Dyce that
10 should have been reported to management but was not?

11 MR. JOHNSON: Objection. Lacks foundation, Your
12 Honor.

13 THE COURT: Well, I'm going to give him a chance to.
14 Go ahead.

15 BY MR. COZZENS:

16 Q Go ahead. Did you?

17 A Yes.

18 Q Tell us what you saw.

19 A Somebody run over the sideboards for a truck.

20 MR. JOHNSON: Objection, Your Honor. Relevance.

21 THE COURT: Yeah, what is the relevance?

22 MR. COZZENS: You know, they made a big deal about
23 what the management knows, and we're trying to say that things
24 can happen out there that management didn't get told about,
25 and here is an example of it.

1 THE COURT: Overruled.

2 BY MR. COZZENS:

3 Q What happened?

4 A Someone run over sideboards of a truck with a forklift.

5 Q And how do you know that management wasn't told about
6 that?

7 A Because they came out and asked me if I had done it.

8 Q Okay. And you didn't do it?

9 A No.

10 Q All right.

11 I hesitate, Your Honor, because I have a bunch of
12 exhibits and I'm trying to figure out a way to avoid using
13 them. If you give me just a second, maybe I'll be able to do
14 that, okay?

15 THE COURT: Um-hmm. You got it.

16 MR. COZZENS: Okay. I thought that would meet your
17 approval.

18 BY MR. COZZENS:

19 Q Let me just ask you in a general way. Were there changes
20 in the policies and procedures out at Dyce during the 20 years
21 that you worked there?

22 A I can't hear you, Larry.

23 Q I'm sorry; I'll try to do better.

24 Were there changes in the policies and procedures out at
25 Dyce during the years that you worked there?

1 A They would have gotten stricter, if anything.

2 MR. DAVIS: I'm going to object. It's vague.

3 THE COURT: Well, it is, but I'm going to see where
4 he's going.

5 MR. COZZENS: Okay. I can tell you, Your Honor,
6 instead of pulling out a series of written policies and having
7 him read them and say, "Was that the same as it was in 1974?"
8 I was trying to do this in a general way.

9 THE COURT: Yeah, and I want you to keep doing it,
10 and then they can object, and I'll rule.

11 MR. COZZENS: Okay.

12 BY MR. COZZENS:

13 Q You said that they got stricter?

14 A Yes.

15 Q Specifically were there policies and procedures relating
16 to loading and unloading tank cars in place during the entire
17 time that you worked out at Dyce?

18 A Yes.

19 Q Were there policies and procedures regarding safety --

20 A Yes.

21 Q -- during the entire time that you worked out at Dyce?

22 A Yes.

23 Q Were there policies and procedures or discussions about
24 complying with EPA standards and requirements?

25 A Yes.

1 Q And was that true from the time you first went to work,
2 for the whole 20 years that you worked out there?

3 A From the time the EPA was initiated, anyway.

4 Q Okay. And you don't --

5 A And even before.

6 Q All right. Did there come a time when those policies and
7 procedures were reduced to writing?

8 A Yes.

9 Q Do you recall when that occurred?

10 A In the early 1980s.

11 Q All right. Were there -- was there safety gear that
12 employees were required to wear on the site?

13 A Yes.

14 Q Was that true the entire time that you worked out there?

15 A Yes.

16 Q Were there -- was there an opportunity for employees to
17 discuss safety concerns with management?

18 A Yes.

19 Q And was that true during the entire time that you worked
20 out there?

21 A Yes.

22 Q Were you ever advised that one of the important
23 policies -- one of the policies at Dyce was to make sure that
24 its work didn't contaminate the environment?

25 A Yes.

1 Q And when were you first advised that?

2 A When I first went to work out there.

3 Q And did that change during the entire time that you
4 worked there?

5 A No.

6 Q Were there policies about what was to be done if there
7 was a spill or leak of chemicals?

8 A Yes.

9 Q And was that true during the entire time that you worked
10 out there?

11 A Yes.

12 Q Did Dyce hire temporary help?

13 A When I first went to work out there, they did, yes.

14 Q And when they had temporary help out there, did they
15 allow that help to handle hazardous materials without
16 supervision?

17 A No.

18 Q You talked about you were trained. Did that training
19 program for new employees by old employees, did that continue
20 throughout the time that you worked out there?

21 A Yes.

22 MR. COZZENS: Would you pull up Admitted
23 Exhibit 505, please?

24 DOCUMENT TECHNICIAN: (Complied with request.)

25 ///

1 BY MR. COZZENS:

2 Q This is a really bad copy of a document, and it's going
3 to be hard to read. But this is admitted into evidence, and
4 it's called a general liability survey report prepared by
5 Continental Insurance Company, dated February 23, 1982. And I
6 don't suppose you've ever seen this document? You didn't see
7 this while you worked out there, did you?

8 A No.

9 Q Did you know that the insurance companies would come out
10 from time to time to inspect the operations to see if they
11 wanted to continue to insure them?

12 A No.

13 Q Okay. I'll just go ahead and read from the middle
14 paragraph on that first page because it's so hard to read. It
15 says, and I quote, "Hazards inherent with some of the
16 chemicals are well protected." And this is a 1982 document.
17 Was that true throughout the time that you worked there?

18 A Yes.

19 Q The last sentence says, "Premises are kept clean. Any
20 chemical spills are immediately cleaned up and disposed of in
21 accordance with EPA regulations."

22 A Yes.

23 Q Was that true during the time that you worked out at
24 Dyce?

25 A Yes.

1 Q Okay. We've already talked about the training programs
2 and the daily meetings. Okay.

3 How did you find Quentin Dyce to be, to work for?

4 A He was the best boss I ever had.

5 Q That's maybe why you worked for him for 20 years, right?

6 A Right.

7 Q Okay. And did he -- was he the kind of guy who cut
8 corners to save costs?

9 A No.

10 Q Was he the kind of guy that wouldn't take the time to
11 listen to your concerns about safety or environmental things?

12 A He always listened.

13 MR. COZZENS: Okay. That's all I have, Your Honor.

14 THE COURT: All right. Mr. Colver, you're going to
15 get to come back after lunch. I'll bet you're excited, aren't
16 you?

17 THE WITNESS: Yeah.

18 THE COURT: We're going to take a recess until 1:15.

19 I give you the usual admonition, ladies and
20 gentlemen.

21 We'll be in recess until 1:15.

22 (Recess taken from 11:53:07 to 13:18:27.)

23 (Open court.)

24 (Jury not present.)

25 THE COURT: Please rise.

1 MR. JOHNSON: Preliminary matter?

2 THE COURT: What's the matter?

3 MR. JOHNSON: We have an exhibit that I'd like to
4 use in cross-examination which is an actual piece of equipment
5 that has been objected to. It is a coupling on a hose. It's
6 Exhibit No. 4315. This coupling is exactly the coupling that
7 the witness testified to, and we want to show it to him so
8 that he can identify it and we can show it to the jury.
9 They've objected.

10 THE COURT: Fine with me. It's illustrative.

11 MR. JOHNSON: Thank you, Your Honor.

12 (Jury present.)

13 THE COURT: Welcome back, Mr. Colver.

14 THE WITNESS: Thank you.

15 THE COURT: Sure. You may begin your cross,
16 Mr. Johnson.

17 MR. JOHNSON: Thank you.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q Good afternoon, Mr. Colver.

21 A Good afternoon.

22 Q My name is Robert Johnson, and I represent the United
23 States Fidelity and Guaranty Company in this case. I'll be
24 asking you a few questions, okay?

25 A Okay.

1 Q You were asked on your direct examination whether you
2 enjoyed working for Mr. Dyce, Quentin Dyce, and you said that
3 you did. He taught you, didn't he, that perc was dangerous to
4 the environment?

5 A Yes.

6 Q And Mr. Dyce actually was an engineer by training, wasn't
7 he?

8 A Yes.

9 Q If you had a problem at work, the entire time you were
10 there working at Dyce for 21 years, you always felt that you
11 could talk to Mr. Dyce about it, correct?

12 A Yes.

13 Q You felt you could approach him with any problem you had
14 at work, correct?

15 A Correct.

16 Q And if you had spilled something there and it was a large
17 spill, you felt that you could go and tell him about it,
18 correct?

19 A Yes.

20 Q Now you worked 21 years at Dyce. In the 21 years you
21 were at Dyce, from 1974 until -- when did you retire?

22 A 1995.

23 Q -- until 1995, you, yourself, never saw a spill of about
24 250 to 1,000 gallons of perc, correct?

25 A No, I never did.

1 Q Okay. And you never saw a spill even of 87 1/2 gallons
2 of perc?

3 A No.

4 Q And you worked with two other guys in the 1970s who
5 worked for Dyce and worked out in the area of the
6 loading/unloading area, right?

7 A Pardon? I didn't hear.

8 Q You worked with two other people at Dyce in the loading
9 and unloading area?

10 A Yes.

11 Q And their names were Mr. Hutchinson and Mr. Bender; is
12 that correct?

13 A Yes.

14 Q All right. And they unloaded -- sometimes you loaded and
15 unloaded perc or other chemicals, and sometimes they did,
16 right?

17 A Yes.

18 Q And often you worked together, correct?

19 A Yes.

20 Q And they never, ever told you that they had seen a spill
21 of 250 to 1,000 gallons of perc, did they?

22 A No.

23 Q In fact, nobody else that you worked with the entire time
24 that you worked at Dyce for 21 years ever told you that they
25 had seen a spill of 250 to 1,000 gallons of perc; isn't that

1 correct?

2 A No, they never did.

3 Q Now you received memorandums from the management at Dyce
4 on a somewhat regular basis, correct?

5 A Yes.

6 Q All right. And, indeed, Mr. Dyce himself would, in the
7 1970s, send you and everybody who worked at Dyce memorandum
8 about different issues or different problems at the site,
9 correct?

10 A I think it was in the '80s instead of the '70s.

11 Q All right. Who did you receive memorandum from in the
12 1970s from management at Dyce?

13 A That would be Mr. Dyce, but it would be verbal instead of
14 written.

15 Q Okay. So he would give you verbal instructions in the
16 '70s, and then in the '80s he started doing memorandum; is
17 that correct?

18 A Yes.

19 Q All right. And Mr. Dyce obviously never told you about a
20 spill of perc, correct?

21 A No.

22 Q All right. And you never received a memorandum from
23 Mr. Dyce, or anybody else in management at Dyce Chemical,
24 about a spill, a large spill of perc, correct?

25 A No, I never did.

1 Q Now you're aware, sir, aren't you, that the Lockwood
2 solvent site is polluted with perc?

3 A Excuse me?

4 Q You're aware that the groundwater under the Dyce facility
5 is polluted with perc?

6 A That's what I've been told.

7 Q And you're aware that the Lockwood solvent site, which is
8 part of where Dyce is, is on the national priorities list of
9 polluted sites, aren't you?

10 A No.

11 Q Do you know that the EPA has determined that the site
12 must be cleaned up?

13 A No.

14 Q Let me show you Exhibit 3059, page 121.

15 Do you see this on your screen?

16 A Pardon?

17 Q You see this on your screen, correct?

18 A Yes.

19 Q And do you recognize from the buildings that are drawn on
20 this figure the outline of Dyce as it appeared in the later
21 years?

22 A Yes.

23 Q Okay. And do you see that yellow area emanating towards
24 the northwest?

25 A Yes.

1 Q That's the plume of perchloroethylene in the groundwater
2 under the Dyce site; is that correct?

3 A I don't know that, sir.

4 MR. COZZENS: Your Honor, I'm going to object. He's
5 said several times he doesn't know anything about this.

6 THE COURT: Well, I think he can ask him if he
7 knows. If he doesn't know --

8 BY MR. JOHNSON:

9 Q Let me show you -- let me ask a question about the
10 document. I understand you've never seen the document before,
11 but this document shows, I can tell you -- the record is
12 clear -- this shows a plume of perc emanating from, in the
13 groundwater, from the Dyce operational area out to the
14 northwest corner and beyond, all the way to the Yellowstone
15 River.

16 And the question I guess I have for you, sir, is it's
17 true, isn't it, that you don't have any idea at all as to how
18 the groundwater got contaminated at the Dyce site? Isn't that
19 correct?

20 A Yes.

21 MR. JOHNSON: Put up 3058, page 50.

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 BY MR. JOHNSON:

24 Q This is another figure from the EPA, and this one shows,
25 in this area here, this is -- you also recognize this as being

1 a figure of Dyce, correct?

2 A Yes.

3 Q Okay. And that figure there shows, according to this, it
4 says, "Approximate area of petroleum soil contamination."

5 A You'll have to repeat that. I couldn't hear it.

6 Q All right. That area that's in blue with the
7 cross-hatching, it says here that that's an approximate area
8 of petroleum oil contamination. Do you see that?

9 MR. COZZENS: Your Honor, I'll object.

10 THE WITNESS: Yes.

11 MR. COZZENS: I think he first needs to establish
12 that there's some foundation to ask this witness about this
13 document.

14 THE COURT: Well, I haven't heard the question yet.

15 BY MR. JOHNSON:

16 Q Well, my question is this. If that area is contaminated
17 with petroleum, do you have any idea how that area of the Dyce
18 facility got contaminated with petroleum?

19 MR. COZZENS: Same objection.

20 THE WITNESS: No.

21 THE COURT: Overruled.

22 BY MR. JOHNSON:

23 Q The answer is no, correct?

24 A Correct.

25 Q Thank you.

1 Now, Mr. Colver, you've had your deposition taken in this
2 case, have you not?

3 A Pardon?

4 Q You had your deposition taken in this particular case,
5 correct?

6 A Yes.

7 Q Okay. And your lawyer -- you had a lawyer at that
8 deposition, and his name was Tom Mielenhausen, correct?

9 A Yes.

10 Q And he represented you at your deposition that was taken
11 here in Billings several years ago; isn't that right?

12 A Yes.

13 Q Okay. And before you testified today, I presume you met
14 Mr. Cozzens here, correct?

15 A Yes.

16 Q How many times did you meet with Mr. Cozzens to go over
17 your testimony today?

18 A Three, I believe it was.

19 Q All right. When did you first meet with Mr. Cozzens to
20 go over your testimony today?

21 A In February, but I can't remember the date.

22 Q Okay. And how long did that meeting last?

23 A A couple hours.

24 Q Okay. And when was your next meeting with Mr. Cozzens?

25 A About a week later.

1 Q All right. And how long did that meeting last?

2 A About an hour and a half --

3 Q All right.

4 A -- two hours.

5 Q And when was the last time you met with Mr. Cozzens to go
6 over your testimony?

7 A Last night.

8 Q And how long did that meeting last?

9 A About an hour and a half.

10 Q Now the events you've testified about on direct happened
11 in the 1970s and the 1980s, correct?

12 A Pardon?

13 Q The events that you testified about happened in the 1970s
14 and the 1980s?

15 A I don't remember.

16 Q All right. And let me ask you this question. You
17 started at Dyce in 1974, correct?

18 A Yes.

19 Q How old were you when you started at Dyce?

20 A Oh, now I've got to get a pencil and paper.

21 Q Do you have any idea how old you were?

22 A Let's see. I must have been about 31.

23 Q About 31 years old?

24 A Thirty-one, 32.

25 Q And how old are you today?

1 A Seventy-six.

2 Q All right.

3 THE COURT: You're still a kid.

4 THE WITNESS: Yeah.

5 THE COURT: That's right.

6 MR. JOHNSON: We were all much younger back in the
7 '70s, Your Honor.

8 BY MR. JOHNSON:

9 Q Let me show you Exhibit 5017, which is one of these
10 aerial photographs that you've seen.

11 5017 is the aerial photo that was taken of the Dyce
12 facility on June 18, 1974. And I think that this is one that
13 you were shown on your direct examination by Mr. Cozzens, and
14 you identified this as being approximately what it looked
15 like, the Dyce facility, what it looked like when you started.

16 I'm going to ask you to identify certain things within
17 this photograph, okay?

18 A Okay.

19 Q All right. There are several large cylinders, cylinder
20 tanks in the tank farm, correct?

21 A Yes.

22 Q All right. Can you circle those?

23 A (Complied with request.)

24 Q All right. And next to them on the east side, on the
25 east -- you know where the east side is, right?

1 A Yes.

2 Q All right. You were out there for a long time, so you
3 know where the east side is, I presume.

4 Next to them on the east side, do you see a tanker truck?

5 A Yes.

6 Q Okay. And that tanker truck is one of those tanker
7 trucks, what they call a tandem truck, right? Do you see
8 that? It's got --

9 A That's truck and trailer.

10 Q It's a truck and trailer.

11 A Yes.

12 Q All right. And the truck and trailer is -- yeah, can you
13 blow this area up?

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 MR. JOHNSON: Blow it up even more so we can get a
16 much better picture.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. JOHNSON:

19 Q All right. And the truck and trailer, I'm circling right
20 now, is this, correct?

21 A Yes.

22 Q All right.

23 And, Your Honor, I'd like to have him mark these things
24 so that we have a record of this, because every time somebody
25 identifies something and draws a circle around it, it

1 evaporates when we push a button. So I've got a photo of
2 this, and it will belabor it a little bit, but there are a few
3 things I'd like him to mark, okay?

4 THE COURT: Go ahead.

5 BY MR. JOHNSON:

6 Q I'm going to hand you -- I'll give you a copy of this.

7 (Discussion off the record at counsel table.)

8 MR. JOHNSON: May I approach?

9 THE COURT: Yes, you may.

10 BY MR. JOHNSON:

11 Q I'm going to give you the same document. I've marked it
12 as Exhibit 4831, and I'm going to give you a Sharpie, okay?
13 And if I could, sir, I'd like you to draw a circle around that
14 tandem truck, or that truck and the trailer that you just
15 testified to, and then if you would -- I'll do the first one
16 for you. Let's mark that, so the record is clear, mark that
17 with an A and then circle it, and then draw it all the way up,
18 and actually I could use a different color for the circle.

19 Let's draw the leader, the leader to this with yellow so
20 that -- well, that doesn't work very well, does it? All
21 right. The black is better because you can see it.

22 A Um-hmm.

23 Q So draw a circle around the truck, and then draw a leader
24 to it. Well, I'll do the first one. You tell me if I'm doing
25 it right or not, okay?

1 A Yes.

2 Q Okay. And then circle it down there. So that is
3 basically what we just did, and that's an A, and let me put
4 your name on here. Why don't you just put your name on here
5 so the record is clear.

6 MR. COZZENS: Can you speak up, Mr. Johnson? I am
7 not hearing you.

8 MR. JOHNSON: Yeah.

9 THE COURT: Get back to the podium.

10 THE CLERK: Do you want a different color?

11 MR. JOHNSON: No, I think black is fine. Thank you.

12 THE CLERK: Okay.

13 BY MR. JOHNSON:

14 Q Okay. I appreciate that, Mr. Colver.

15 The truck in that picture there has pulled up close to
16 the tanks in the back, correct?

17 A Yes.

18 Q All right. And it's pulled up close to the tanks in the
19 back because it was there to unload chemicals into those
20 tanks, correct?

21 A I would presume so.

22 Q Right. And in 1974 when you started, tanks and tanker
23 trucks could come right in next to the various different tanks
24 that were in the tank farm, and you could empty -- you could
25 fill up those tanks on the tank farm from those tanker trucks,

1 correct?

2 A Yes.

3 Q Now there's another, there's another -- I'm going to draw
4 another one. There appears to be another truck here. Would
5 you agree with me that that appears to be a truck?

6 A Where is that at?

7 Q I just marked it with -- hopefully it's on yours, too.

8 A I still don't see it.

9 THE COURT: Do you see it right here? Does it
10 appear on your screen?

11 THE WITNESS: Oh.

12 THE COURT: Yeah.

13 MR. JOHNSON: Right there.

14 THE WITNESS: Right here.

15 BY MR. JOHNSON:

16 Q Is that another truck?

17 A Yes.

18 Q All right. Why don't you circle that, and drop a B on
19 that one.

20 A (Complied with request.)

21 Q How long were those trucks back in the '70s?

22 A The trailer that we just drew --

23 Q Yeah.

24 A -- is probably a 40- to 45-foot --

25 Q Okay.

1 A -- trailer.

2 Q The trailer itself is 40 to 45 feet?

3 A Yes, and the tractors can vary in length.

4 Q All right. And the tractors, for those of us who
5 aren't --

6 A Pardon?

7 Q The tractors, for those of us who don't work in the
8 industry, that's the part that they drive, right, the tractor
9 part?

10 A Yes.

11 Q And let me ask you about this picture all over again.

12 Do you see the perc tank in this picture, 1974?

13 A I'm not sure where it's at in this picture, sir.

14 Q All right. You said that --

15 A I think it might be one of these down here, but I can't
16 say for sure.

17 Q All right. Why don't you, as opposed to writing on that
18 picture, tell us, using the telestrator, sir, the telestrator
19 on the TV -- don't mark the TV screen with your Sharpie. Mark
20 it with your finger, okay?

21 THE COURT: Yeah. You'd be cleaning it off. That
22 would not be good.

23 MR. JOHNSON: Yeah. And you'd be watching, I'm
24 sure.

25 THE WITNESS: I think it's one of these tanks here,

1 but I cannot say for sure.

2 BY MR. JOHNSON:

3 Q Okay. You don't know, sitting here today, you don't have
4 any recollection as to the year, even, in which the perc tank
5 showed up there, correct --

6 A At?

7 Q -- at the Dyce facility in Lockwood?

8 A I think probably in 1975.

9 Q Okay. So you don't think there was a perc tank there in
10 1974?

11 A No.

12 Q In fact, when you started in 1974, there was a perc tank
13 that was in a railroad car without wheels on it at Dyce's
14 downtown facility; isn't that correct?

15 A I don't know, sir. I was never there.

16 Q Okay. In 1974 when you started, they handled -- Dyce
17 sold perc, right?

18 A Yes.

19 Q And they sold it in 55-gallon drums?

20 A Yes.

21 Q All right. And when you started, they weren't filling it
22 from a bulk tank? Those 55-gallon drums weren't being filled
23 by a bulk tank in the Dyce facility in Lockwood; isn't that
24 correct?

25 A Correct.

1 Q All right. They were getting those 55-gallon drums full
2 of perc from somewhere, but you have no idea where?

3 A I have no idea where.

4 Q All right. And when the perc tank got delivered, to your
5 best recollection, in 1975, were you there when it got
6 delivered?

7 A I don't remember it being delivered, but that's when it
8 was brought in --

9 Q All right.

10 A -- or installed, I should say.

11 Q Okay. And we'll get to the '75 photo in a second.

12 Now I think, as you testified, there's no drumming shed
13 on this date in this photo, correct?

14 A No, there's not.

15 Q So how did you drum product in 1974?

16 A It was drummed -- when I went to work there, the scale
17 was set up to fill drums on.

18 Q Okay.

19 A But there was no shed over top of it.

20 Q Okay. And where, where was the scale that you used to
21 fill drums on this photo? If you just touch that area, I
22 think it will mark.

23 A Yeah. I've got to get it located.

24 Q Would it be helpful if I'd turn the screen a little bit?

25 THE COURT: I don't think you can.

1 THE WITNESS: This one seems pretty solid.

2 THE COURT: Yeah, it's solid.

3 BY MR. JOHNSON:

4 Q All right.

5 A Let's see. It would be right in here. And I like my
6 straight lines.

7 Q All right. And that scale that you just drew that was
8 right in there, that's eventually where you put the drumming
9 shed, correct?

10 A Yes.

11 Q All right. And what did the scale sit on?

12 A Pardon?

13 Q What did the scale sit on in 1974?

14 A Cement.

15 Q All right. And was there cement poured right there where
16 you just touched?

17 A It was poured when I went to work out there.

18 Q All right. And how big was that cement that the scale
19 sat on?

20 A It was probably 6 feet wide and 20 feet long.

21 Q Okay. And was that the same concrete that you then put
22 the configuration that sat over the drumming shed?

23 A Pardon? I don't understand.

24 Q The concrete that was poured, the 6 feet by 20 feet that
25 you just said, was that, in effect, the drumming shed and then

1 you covered it with -- you covered it in a subsequent year?

2 A Yes.

3 Q Okay. And that drumming shed had a scale, and it was a
4 digital scale; is that correct?

5 A No, it wasn't digital. It had a needle.

6 Q All right. It had a needle. And it only weighed one
7 drum at a time; isn't that correct?

8 A Yes.

9 Q All right. And how would you get the drum up on the
10 scale?

11 A They had a set of rollers that you could roll a full drum
12 off and an empty one onto the scale.

13 Q All right. And where were the rollers? Were they in the
14 concrete?

15 A Yes. They sat in a trough in the concrete.

16 Q All right. And the rollers, where would you roll the
17 drum off to? Would you roll it to one end or the other, or
18 did you roll it off to the side?

19 A We rolled it off to the west.

20 Q All right. And when you rolled them off to the west,
21 then what would happen to the drums?

22 A We'd pick them up with the drum cart and set them over
23 onto a pallet.

24 Q Okay. And when you used pallets, there were basically
25 four drums to a pallet, correct?

1 A Yes.

2 Q And then you'd pick the pallet up with a forklift and
3 take the drums to wherever you were going to store them,
4 correct?

5 A Yes.

6 Q Where would they be stored in '74?

7 A I think in the lower warehouse.

8 Q All right. And the lower warehouse is that bigger
9 warehouse down at the bottom of the picture, correct?

10 A The one down here.

11 Q And the upper warehouse is the little warehouse, correct?

12 A The lower warehouse is the little one.

13 Q Oh, I'm sorry. I'm sorry. I had warehouse dyslexia
14 there for a second.

15 The upper warehouse -- the lower warehouse is the smaller
16 one, correct?

17 A Yes.

18 Q Yeah. Okay. And so you would store the drums in that
19 smaller warehouse?

20 A Yes.

21 Q Okay. And to store the drums in the lower warehouse, you
22 would take the forklift with the pallet on it, and you would
23 drive it up into a garage door that opened on the lower
24 warehouse, correct?

25 A Yes.

1 Q All right. There was a big overhead garage door on the
2 lower warehouse, correct?

3 A Yes.

4 Q All right. And I think you testified that there was a
5 concrete pad in 1974.

6 A Yes.

7 Q All right. And that concrete pad was on an incline up
8 into the lower warehouse; isn't that correct?

9 A Yes.

10 Q The lower warehouse was basically about 4, at least
11 4 inches above -- the floor of the lower warehouse was at
12 least 4 inches above the surrounding property, correct?

13 A Yes.

14 Q And so there would be a steady incline in the concrete up
15 into the door of the lower warehouse, correct?

16 A Yes.

17 Q Now did that concrete, did that concrete pad that sloped
18 up into the lower warehouse, did that go across the whole
19 front of the lower warehouse, or did it only go up to the
20 door?

21 A It went across -- I'll try to remember now. Pretty much
22 as I remember, it went to the lower warehouse.

23 Q Okay. So it went from one end of the lower, one end of
24 the lower warehouse, which I'll mark it right here, from --
25 whoops. To the extent I can mark it, from right there to

1 right here, it went all the way across, correct?

2 A I believe so.

3 Q Okay. And it started to slope up, and I think you can
4 actually see it starting to slope up here on this thing. It
5 starts to slope up about there; isn't that correct?

6 A Yes.

7 Q Okay. Why don't you mark that with a C. Mark that line
8 of the concrete apron, if I can call it an apron, that leads
9 up into the, up into the lower warehouse. Would you just
10 please draw that just like I've drawn it here except a little
11 nicer than I've drawn it, and mark that with a C?

12 A (Complied with request.) Like so?

13 Q I'll see.

14 All right. Well, let me ask you a question about that,
15 okay?

16 A Okay.

17 Q What you just circled was less than the whole front of
18 the lower warehouse, and the question I guess I have for you,
19 is you just testified that the concrete went from one end of
20 the lower warehouse all the way to the other, but you just
21 circled a smaller portion of it. Why did you do that?

22 A I think my memory was wrong on the first question, where
23 it went --

24 Q All right. So --

25 A -- the full width.

1 Q Say that again?

2 A Where it went the full width. I think my memory was
3 wrong on that.

4 Q Okay. So you don't think it was the whole width?

5 A Not after I looked at the picture here.

6 Q All right. And when you looked at the picture, you
7 circled the smaller area, which is this area right here, and
8 that's what you think that the -- where the concrete apron
9 was; is that correct?

10 A Yes.

11 Q All right. And that led up into the door and to the
12 lower warehouse, correct?

13 A Yes.

14 Q All right. Now let me go back to the -- let me refer you
15 to another area of the -- let me ask you about the berm that
16 you were asked about on direct, in 1974.

17 The berm, in 1974, was not, in this picture, was not
18 completed; is that correct?

19 A It don't look like it was completed right up by the lower
20 warehouse.

21 Q Say that again?

22 A It don't look like it was completed by the lower
23 warehouse.

24 MR. JOHNSON: All right. Can you blow up that
25 portion of this that -- this area? Get it down. A little bit

1 higher.

2 DOCUMENT TECHNICIAN: (Complied with request.)

3 MR. JOHNSON: Okay. Good.

4 BY MR. JOHNSON:

5 Q The berm appears to be -- it's obviously open in the
6 southeast side, correct, because the trucks are coming in
7 there?

8 A Pardon?

9 Q It's open right through here because the trucks are
10 coming in, correct?

11 A There was an opening there, yes.

12 Q Okay. And it started about here and went up here and
13 went around here and then went down this side, correct?

14 A Yes.

15 Q All right. But it wasn't completed all the way around
16 the bottom of the tank farm, correct, in 1974?

17 A It looks like it went up to about there.

18 Q Okay. It went down to about here, but it wasn't
19 completed on the south side of the tank farm, correct?

20 A It don't look like it in the picture here.

21 Q Do you remember that you testified earlier in this case
22 that you thought that the berm, in 1974, went all the way
23 across the bottom of the tank farm?

24 A How do you mean? Which do you mean, the "bottom"?

25 Q Say that again?

1 A Which do you mean is the bottom of the warehouse?

2 Q I'm sorry. I don't mean the bottom of the warehouse.

3 The bottom of the tank farm.

4 A Down here?

5 Q Down here.

6 A Okay.

7 Q It doesn't -- the berm is not there in 1974, right?

8 A It don't look like it.

9 Q Okay. Now the catch pond is in the upper, upper corner
10 up here, which is right here, right?

11 A Yes.

12 Q All right. And will you draw the catch pond, where it
13 exists, and mark it with a G, with whatever the next letter
14 is, a D, I think it is, on your picture?

15 A Pardon? I don't understand your question.

16 Q All right.

17 A My hearing is a little bad, and I missed something there.

18 Q I appreciate that, and I will go as slow as I can, and
19 I'll try to speak as loudly as I can and into the microphone
20 so you can hear me.

21 I just circled -- let me back up.

22 As opposed to my doing it, why don't you circle where the
23 catch pond is in this 1974 photo.

24 A (Complied with request.)

25 Q Now over in this area, do you see it's a little darker

1 through here, where I'm drawing my line? Do you see that?

2 A Yes.

3 Q That shows wetness, does it not, in that area? The dirt
4 is wet there, isn't it, in this photo?

5 A I don't really know.

6 Q All right. Because -- the reason I ask that is because
7 that's the same color as the catch pond on this photo,
8 correct?

9 A Yes.

10 Q Okay. And the slope of this whole area was towards the
11 catch pond, correct?

12 A Yes.

13 Q All right. But the catch pond, in 1974, we call it a
14 pond, but it's just a low-lying area back there next to the
15 berm, correct?

16 A It had a small berm around it, anyway.

17 Q Okay. It had a small berm to the north and to the west,
18 correct?

19 A Yes.

20 Q All right. It didn't really have a berm to the east, did
21 it?

22 A I don't remember right now.

23 Q All right. Let me get rid of all of the markings.

24 You don't see a berm there to the east of that catch pond
25 where you drew before, correct?

1 A No.

2 Q So it's not like a swimming pool or anything? It's just
3 the low-lying area back in the back where rinsewater and
4 rainwater can run back to, correct?

5 A Yes.

6 Q All right. And in 1974, there was not a liner in that
7 catch pond, was there?

8 A I don't know. I wasn't there when they put it in.

9 Q Okay. You weren't there when they put it in, and so the
10 catch pond was there when you started in 1974, but you didn't
11 see a liner in the catch pond, correct?

12 A Not at that time.

13 Q All right. And you don't even know -- you don't have any
14 idea when they put the liner in, do you?

15 A No.

16 Q Okay. Now the purpose of the catch pond is exactly what
17 its name implies? It was there to catch any chemical spills
18 in the tank farm and the loading and unloading area; isn't
19 that correct?

20 A Yes.

21 Q And that's because the slope of the property was back to
22 the catch pond, and whatever was spilled in the daily
23 splashing and splashing of chemicals onto the ground got
24 rinsed off and went back to the catch pond, and that was the
25 purpose of it, correct?

1 A Yes.

2 Q And that's how it got its name, the "catch" pond; it
3 caught chemicals, correct?

4 A That would be my guess.

5 Q Okay. Now let me show you the 19 -- the 11/4/75 photo.

6 (Discussion off the record at counsel table.)

7 MR. JOHNSON: 5019.

8 BY MR. JOHNSON:

9 Q All right. I'm showing you another photo here that's
10 dated 11/4/75. That's November 4, 1975. Do you see that?

11 A Yes.

12 Q All right. And this is Exhibit 5019, and it's in
13 evidence.

14 Can you blow up the catch pond area?

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. JOHNSON:

17 Q Now this is over a little more than a year later from the
18 prior photograph. Here, the catch pond has some liquid in it.
19 Do you see that?

20 A Yes.

21 Q All right. And right next to that -- and why don't you
22 circle that on your -- not with the pen.

23 A (Complied with request.)

24 Q All right. And the question I have for you is whether
25 you know whether there was a liner in the catch pond at that

1 point in time.

2 A As far as I know.

3 Q All right. But you don't know when they put the liner
4 in, correct?

5 A No.

6 Q And you don't see a liner in the catch pond in this
7 picture, right?

8 A No.

9 Q Now do you see the tank that's right next to the catch
10 pond? And I'll circle that one. What's -- do you know what
11 that tank is for?

12 A No, I don't.

13 Q Now the berm in this picture, in 1975, is still not
14 completed on the east side, is it?

15 A Yes, it was completed then. You look up by the drumming
16 shed, and you can see it coming in there.

17 Q All right. I just asked you about the east side, though,
18 Mr. Colver.

19 A The east side. It came only to there.

20 Q Okay. So I'll just draw here. It goes up here, starts
21 about there, comes around here, and goes down here, correct?

22 A Yeah, yes.

23 Q All right. And then the question is, gee, all of a
24 sudden, you can't see in the shadow there, correct?

25 A Correct.

1 Q So you don't know whether, in this particular photo,
2 there's a berm in that shadow portion, do you, that connects
3 all the way across the south side?

4 A You can see just the end of it over by the drumming shed.

5 Q All right. And so you see right here, between the
6 shadows, you see a little berm, correct?

7 A Yes.

8 Q All right. Do you recall, directly north of that,
9 directly north of that -- well, strike that.

10 All right. And why don't you draw where you think the
11 berm was in nineteen-seventy- -- well, you know what? That's
12 all right. We'll come back to that.

13 Okay. Let me ask another question. The perc tank, you
14 told us, was this -- was in that area right there, is that
15 correct, in this 1975 photo?

16 A I believe that it was, yes.

17 Q All right. Do you recognize -- you're looking at the
18 1975 photo like the rest of us. That's a big white blob. Do
19 you recognize that, or a portion of that, as being the perc
20 tank?

21 A I believe it would be just on the west side. There's
22 actually three tanks there.

23 Q All right. Well, you just drew stuff way down in the
24 shadow; is that correct?

25 A Pardon?

1 Q You just drew way down in the shadow, next to the upper
2 warehouse; is that correct?

3 A I didn't mean to.

4 Q Oh, okay. That's fine. Let's get rid of what's on
5 there.

6 All right. Let's start that all over again.

7 Would you circle, for the jury, what you believe is the
8 perc tank in 1975?

9 A Whoops. I'm getting lots of lines I didn't want.

10 Q All right. Well -- all right. So that --

11 A I'm trying to keep from shaking.

12 Q All right. Well, you're doing a good job.

13 That's what you testified to when Mr. Cozzens asked you
14 what the perc tank was, correct?

15 A I believe so.

16 Q Okay. And why do you think that that's the perc tank?

17 Do you have a recollection about that, or did somebody refresh
18 your recollection as to what it was?

19 A I think at this time they were stored over there. There
20 was three tanks that always set together, and I think they
21 were stored there during construction of the drumming shed.

22 Q All right. And earlier in this case you testified, did
23 you not, that the perc tank was actually right here? Do you
24 recall that testimony? Where I just outlined?

25 A It sat over a little more to the east, as I recall.

1 Q All right. But a little over more to the east, at a
2 subsequent date?

3 A Out there.

4 Q At a subsequent date, though, correct?

5 A Pardon?

6 Q At a subsequent date?

7 A I don't understand.

8 Q At a date after the date of this picture.

9 A Yes.

10 Q All right. But on the date of this picture, November 4,
11 1975, you believe that the perc tanks are these tanks that I'm
12 now drawing a circle around again, right?

13 A One of them was.

14 Q Okay. And you think that there were three tanks there?

15 A Yes.

16 Q All right. Can you do -- let me hand you what's been
17 marked as 4832. Okay. And if you could, sir, draw a circle
18 around the perc -- the three tanks that you just testified to,
19 and mark that with an A.

20 MR. COZZENS: Can I have one of those?

21 MR. JOHNSON: (Handing.)

22 MR. COZZENS: Thanks.

23 BY MR. JOHNSON:

24 Q Did you do that, sir?

25 A Yes.

1 Q Now in the 1974 photo -- trucks, at this point in time,
2 in November of 1975, could drive right in through the opening
3 here and drive up right next to the perc tank, right, and fill
4 that perc tank, correct?

5 A Yes.

6 Q And that's how it was done back in -- when this was taken
7 in November of 1975; isn't that correct?

8 A I believe so.

9 MR. JOHNSON: All right. Take it out a little bit.

10 DOCUMENT TECHNICIAN: (Complied with request.)

11 BY MR. JOHNSON:

12 Q Indeed, as you look at this picture, you circled before,
13 I think, what was the asphalt. The asphalt was put in after
14 1974, and this is now 1975, and there's asphalt there,
15 correct?

16 A Yes.

17 Q All right. And part of the asphalt, and I'll try to
18 do -- well, I really don't like those plusses. I'm going to
19 circle the asphalt a little bit as it relates to this area.
20 The asphalt goes through here, et cetera.

21 You can see truck markings, truck tire marks right
22 through here going to that area, correct, on this picture?

23 A Yes.

24 Q Okay. Now the drumming shed is shown in this picture.
25 Why don't you circle that yourself.

1 A On this?

2 Q Circle it on the picture and mark it with a B.

3 A (Complied with request.)

4 Q Oh, it's red now.

5 A Yeah, that surprised me, too.

6 Q So that's the, that's the drumming shed, and you said, on
7 direct, that you constructed that overhead?

8 A Yes.

9 Q Okay. And did anybody help you in that work?

10 A Mr. Bender and Mr. Hutchinson.

11 Q All right. They were the other two guys that worked in
12 the yard with you, correct?

13 A Yes.

14 Q And at the time that you -- it was open in the front and
15 in the back and on the sides, correct?

16 A Pardon?

17 Q The drumming shed was open on each side; is that not
18 correct?

19 A Just in the front.

20 Q Just in the front. So the back was closed off?

21 A Yes.

22 Q And the sides were closed off?

23 A Yes, the ends.

24 Q The ends were closed off. And the only thing that was
25 open was the front?

1 A Yes.

2 Q Now when you rolled drums -- you rolled drums in and out
3 of there, right?

4 A Yes.

5 Q All right. And you rolled them out the front because
6 that's the only place that was open, correct?

7 A Yes.

8 Q And there was a drain in that drumming shed, was there
9 not?

10 A The trough formed a drain.

11 Q Say that again?

12 A The trough that the rollers and the scale set in formed a
13 drain out to the west.

14 Q All right. And I'll come back to that in a second, but
15 you drummed chemical products, yourself, in there, correct?

16 A Yes.

17 Q And Mr. Hutchinson and Mr. Bender also did that, as well?

18 A Yes.

19 Q And when did you become the maintenance guy at Dyce?

20 A Probably in about 1977.

21 Q After you became the maintenance --

22 A I kind of fell into it slowly.

23 Q All right. Because you were good at fixing things,
24 right?

25 A Yes.

1 Q All right. And so to a certain extent, they probably
2 drummed more product than you did because you were off doing
3 maintenance; is that correct?

4 A Yes.

5 Q The inside of the drumming shed, it had an electrical
6 outlet, did it not?

7 A There was electricity in there. There's a 220 outlet. I
8 remember that.

9 Q All right. What was the 220 outlet used for?

10 A The operator -- or portable pump.

11 Q Okay. Because the pumps you had were electric, right?

12 A Yes.

13 Q All right. And you stored the pumps at this point in
14 time, in 1975, in the drumming shed?

15 A They were stored in the lower warehouse.

16 Q Okay. And when you needed the pump, when you needed a
17 pump, you would take it out. To drum product, you would take
18 it out, and you'd take it over to the drumming shed and plug
19 it in and set it up, correct?

20 A Yes.

21 Q And it would set up on the concrete, correct?

22 A Yes.

23 Q All right. How much did the -- there was one pump that
24 was used for perc?

25 A Yes.

1 Q And how much did that pump weigh?

2 A Probably about 80 pounds.

3 Q Boy. That's a lot.

4 A They were pretty good-sized pumps.

5 Q Yeah. And you'd have to -- was it on wheels?

6 A No. It just sat on a platform, and we used a two-wheel
7 cart to haul it around with.

8 Q Oh, I see. Okay.

9 Now the drain that we talked about that was in the
10 drumming shed, it collected any chemicals that were spilled
11 during the drumming process, correct?

12 A Yes.

13 Q And when you drummed product in the daily drumming of
14 product, I mean, it would spill chemicals from time to time in
15 connection with the drumming of the product, correct?

16 A Possibly, yes.

17 Q Okay. Because when you drum product, you're hooking up a
18 hose to a pump, correct?

19 A Yes.

20 Q And then you're taking one end of the hose -- I'm sorry.

21 One end of the hose is attached to, is it, when you're
22 drumming products with the perc tank way back in the back
23 here, in 1975, would you have a hose that ran all the way from
24 that perc tank all the way to the drumming shed?

25 A It ran to the pump, and then we had a short pump that we

1 used to do the drumming with. And on the end of that short
2 pump, there was a valve and a short piece of pipe that would
3 fit down into the drum.

4 Q Okay. And so when you drummed perc back in 1975, you'd
5 run a hose all the way back from that perc tank, all the way
6 to the back side of the drumming shed?

7 A Yes.

8 Q And then how would you get the hose around into the front
9 of the drumming shed?

10 A There was an opening that we brought the hose through.

11 Q And how many -- how long were the hoses? They were only
12 20 feet, weren't they?

13 A They could have been most any length. That one would
14 have probably been about 20 feet, yes.

15 Q How far was it from the back of the perc tank -- strike
16 that.

17 How far was it, in 1975, from the perc tank to the back
18 of the drumming shed?

19 A I never measured it.

20 Q It's a lot longer than 20 feet, isn't it?

21 A No, it really -- I don't believe it was.

22 Q Okay. And you would take a hose all the way from that
23 perc tank and take it in through the back of the drumming
24 shed, and that, you're telling us, is less than 20 feet?

25 A Um-hmm.

1 Q And then when it got in the perc -- it got in the
2 drumming shed, you'd attach it to a pump?

3 A Pardon?

4 Q I think you mentioned that there were two pumps when you
5 took it out of the perc tank, so where is the second -- where
6 were the two pumps located?

7 A Just one pump.

8 Q Oh, just one pump.

9 A Yes.

10 Q And that pump would be in the drumming shed itself?

11 A Yes.

12 Q And then you would attach that end of the hose to the
13 pump in the back of the drumming shed, on the floor of the
14 drumming shed, correct?

15 A Yes.

16 Q And then you would run from that pump to the drum, what,
17 another hose, did you say?

18 A We had another short hose for that.

19 Q All right. And so you'd have to take that short hose,
20 and you'd have to put it into the drum, right?

21 A Yes.

22 Q Okay. And the drums were 55 gallons, correct?

23 A Yes.

24 Q And your pump pumped 60 gallons a minute, correct?

25 A Yes.

1 Q All right. So that means you would fill up a drum, and
2 even though the drums were 55 gallons, you only filled them to
3 about 50 gallons, correct? You didn't fill them all the way
4 to the top?

5 A I think they were 55, and the drum would actually hold
6 about 60 gallons.

7 Q Okay. So you would fill it up with 55 gallons of perc?

8 A Yes.

9 Q All right. And if you're pumping at 60 gallons a minute,
10 that takes less than a minute to fill up the perc tank, right?

11 A Yes.

12 Q I'm sorry; the drum, correct?

13 A Yes.

14 Q All right. And then you would take those drums, and you
15 would weigh them, and when they got to a certain amount, you
16 knew that you had 55 gallons, correct?

17 A Yes.

18 Q And then you'd turn the pump off?

19 A We'd shut the valve off on -- we had a valve on the end
20 of the short hose. We shut that valve off.

21 Q Okay. And then you'd take it out --

22 A (Nodded head affirmatively.)

23 Q -- of that, and then you'd pull up another drum, and
24 you'd do it all over again; is that correct?

25 A Yes.

1 Q And in the time that you would take that perc, the hose
2 out of the drum and move it around and get it -- move that
3 drum out and put another drum in, you would spill a little
4 perc, wouldn't you, typically?

5 A Very little.

6 Q All right. But you would spill some, right?

7 A Maybe a few drops.

8 Q All right. And you didn't collect those drops in any
9 bucket or anything, did you?

10 A No.

11 Q Now coming out of the back side of this drumming shed,
12 you can see some water on the ground, right, right in that
13 location?

14 Why don't you make that larger.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. JOHNSON:

17 Q Okay. You see that, in 1975? You see water coming out
18 of the back of the drumming shed, correct, in this area right
19 here?

20 A I see the area, but I can't tell for sure that it's
21 water.

22 Q All right. And it could be liquid of some sort, correct?

23 A Could be.

24 Q Okay. Isn't it a fact, sir, that the drain that you had
25 in the drumming shed went out the back of the drumming shed

1 and into the tank farm?

2 A Pardon?

3 Q Isn't it a fact that the drain that you had in the
4 drumming shed, in the concrete platform of the drumming shed,
5 went out the back of the drumming shed and into the tank farm
6 and down into the catch pond?

7 A Yes.

8 Q And so whatever was spilled in 1975 in there went through
9 that drain, which came out the back, and went down into --
10 eventually, if there was enough of it, it went down to the
11 catch pond, correct?

12 A I believe that it went around this, by the lower
13 warehouse, and down this way into the catch pond.

14 Q All right. It didn't, it didn't go, you're saying it
15 didn't go out the back and down to the catch pond?

16 A No, because the drain was in this corner here.

17 Q All right. Did it, did the drain -- if the drain was in
18 that corner there, didn't it drain out into the tank farm and
19 then down to the catch pond?

20 A Yes.

21 Q It did, correct?

22 A I believe so.

23 Q Okay. Indeed, that's what you've testified to before in
24 this case, correct?

25 A Pardon?

1 Q You've told us that before in this case, haven't you,
2 that it drained down into the catch pond?

3 A I believe so.

4 Q Now the Dyce policy was that when you drum, you're
5 supposed to drum with two guys, right?

6 A Supposed to, but it didn't always happen that way.

7 Q The three of you guys were pretty busy all the time,
8 weren't you?

9 A Pardon?

10 Q The three of you guys were pretty busy, weren't you?

11 A We got that way once in a while.

12 Q All right. And so there were times, were there not, when
13 you drummed by yourself?

14 A Yes.

15 Q All right. Even though it was supposed to be a two-man
16 job, correct?

17 A Yes.

18 Q All right. And you drummed by -- and it was a lot harder
19 to drum by yourself than it was to have two guys there, right?

20 A Yes.

21 Q Because you've got to -- I mean, you've explained to us.
22 It's really a two-man job, but if one person does it, it's
23 just not as easy to do it with one person?

24 A Right.

25 Q And when one person did it, you were probably much more

1 likely to spill more than a few drops of perc; isn't that
2 correct?

3 A Not necessarily.

4 Q All right. But if you were doing it by yourself, there
5 were times when you spilled more than a few drops of perc;
6 isn't that correct?

7 A Probably correct, yes.

8 Q Now when you were -- when the trucks would come in here
9 in 1975 and come in to load one of these perc tanks, the perc
10 tank that is one of these three tanks back there, okay, that
11 perc tank that you had was 1,500 gallons, correct?

12 A Yes.

13 Q All right. And it would be pumped from the truck through
14 the same perc pump, correct?

15 A Yes.

16 Q And that perc pump pumped, again, 60 gallons a minute,
17 correct?

18 A Yes.

19 Q All right. So it would take you about 25 minutes to fill
20 up a 1,500-gallon tank, correct?

21 A Somewhere in there.

22 Q All right. And obviously if there was stuff already in
23 there, if there was perc already in there, it would take you
24 less time than 25 minutes?

25 A Yes.

1 Q All right. And it was the policy of Dyce that you had to
2 stay there the whole time, right, while that operation was
3 going on?

4 A You were supposed to.

5 Q Okay. And you, when you did it, you always stayed there,
6 right --

7 A Yes.

8 Q -- because that was your job?

9 A Yes.

10 Q Correct? Because if anything happened, you wanted to be
11 there in order to turn the pump off right away, correct?

12 A Correct.

13 Q And that was Dyce's policy?

14 A Yes.

15 Q The whole time you were there?

16 A Yes.

17 Q And I think you testified on your direct testimony that
18 if a little pinhole appeared in a hose, you would see it
19 because you're right there pumping the product, correct?

20 A Yes.

21 Q And it was up to you, then, if there was a pinhole in a
22 hose, it was up to you to try to fix it, correct?

23 A It was up to me to fix it.

24 Q All right. And if you couldn't fix it, you'd have to get
25 a new hose?

1 A Yes.

2 Q Do you ever recall getting a new perc hose?

3 A Yes.

4 Q When?

5 A Oh, probably once a year.

6 Q Okay. And you said that the perc hoses were always
7 painted with blue?

8 A I think they were blue.

9 Q All right. What were the other colors that were used for
10 other hoses?

11 A We used black, green, yellow, red.

12 Q What was the yellow for?

13 A Caustic soda, I believe.

14 Q All right. What was the black for?

15 A Black, I can't remember.

16 Q All right. What about green?

17 A The green would have been a glycol house.

18 Q All right. What about red?

19 A It would have been alcohol.

20 Q And the whole time you were there, the perc hoses were
21 always with blue?

22 A They were the same color.

23 Q All right. But you're not sure if they were blue or not,
24 right?

25 A They could have been a different color. It's hard to

1 remember now.

2 Q It was a long time ago, isn't it?

3 A It is, for short memory.

4 Q Yeah. And when you had hoses, perc hoses, did you have
5 two of them or one?

6 A Two.

7 Q All right.

8 A Two to three.

9 Q Two to three at a time.

10 A Yes.

11 Q And those hoses were about 20 feet long, correct?

12 A There was one that was only about 10 feet long.

13 Q All right. So you had one that was 10, and the others
14 were how long?

15 A Probably 20-foot.

16 Q And they had 2-inch diameters, correct?

17 A Yes.

18 Q They were made with reinforced construction; isn't that
19 correct?

20 A Reinforced construction, did you say?

21 Q Yes, sir.

22 A Yes.

23 Q In other words, they weren't like your typical garden
24 hose, right?

25 A No.

1 Q No. They had stuff in them that would keep them from
2 bursting open, correct?

3 A Yes.

4 Q Okay. Now you mentioned that the hoses had couplers at
5 the end of them?

6 A Yes.

7 MR. JOHNSON: All right. Let me show you one, okay?

8 (Discussion off the record at counsel table.)

9 BY MR. JOHNSON:

10 Q This, I will represent to you, sir, this is Exhibit 4315,
11 okay? And this, sir, I'm not -- this is not -- I'm not
12 representing to you that this is one of the perc hoses, but
13 this does have a coupler on it. Do you see that?

14 A Yes.

15 MR. JOHNSON: All right. Let me approach. If I
16 may, Your Honor?

17 THE COURT: You may.

18 And, ladies and gentlemen, I've admitted it for
19 illustrative purposes. That means it can be used at any time
20 during the trial, but it's not an exhibit that you'll take
21 into the jury room with you.

22 Go ahead.

23 BY MR. JOHNSON:

24 Q All right. Now you've testified that this -- I'll keep
25 my voice up as much as I can here. Let me put the microphone

1 over here.

2 You've testified about a quick coupler that was on the
3 perc hoses, correct?

4 A Yes.

5 Q And this is, indeed, such a coupler, is it not?

6 A Yes.

7 Q And to undo it, you just take these things off, and it
8 comes right apart, right?

9 A Yes.

10 Q And that's probably why they call it a quick coupler,
11 right?

12 A Yes.

13 Q It couples very quickly, and, when you couple it, you
14 couple it quickly, correct?

15 A Yes.

16 Q And it's firm, isn't it?

17 A Yes.

18 Q You can't pull. Why don't you pull it.

19 A (Complied with request.)

20 Q You can't pull it apart, right?

21 A No.

22 Q Doesn't pull apart. And even if one of these things
23 comes undone --

24 A You still can't.

25 Q -- you still can't do it?

1 A There's one gasket in there, too, if you can see it.

2 Q Okay. All right. And those were exactly the types of
3 quick couplers that you used, right?

4 A Yes.

5 Q And did they have, on the pumps, the same type of
6 connection with the quick coupler?

7 A Yes.

8 Q And what about on the tank? Did the tank have the same
9 connection with the quick coupler?

10 A Same type.

11 Q Okay. So all of the connections, when you made those
12 connections, the hose to the tank and the tank to the pump and
13 the pump to the drumming shed, I mean, all of those things,
14 they were all connected with a quick coupler, correct?

15 A Yes.

16 Q Now when you pumped perc into a perc tank, you stood
17 about, oh, 10 feet or so away from the pump, correct?

18 A Yes.

19 Q All right. And if a problem developed, you could turn
20 off the pump in a matter of a few seconds, correct?

21 A Yes.

22 Q And you stood there so that you could turn it off, right?

23 A Yes.

24 Q Now on direct examination, you said that truck drivers
25 that would come in to unload, I think you said, more often

1 than not or typically walked away?

2 A Yes.

3 Q And where did they go?

4 A They went up in the coffee room and drank coffee.

5 Q Now you testified in this case before, did you not?

6 A Pardon?

7 Q You testified in this case before, correct?

8 A Yes.

9 Q And you swore to God to tell the truth when you testified
10 in this case, correct?

11 A Yes.

12 Q Have you ever seen a transcript of your testimony?

13 A Pardon?

14 Q Have you ever seen a transcript of your testimony in this
15 case?

16 A No.

17 MR. JOHNSON: All right. Let me -- may I approach,
18 Your Honor?

19 THE COURT: Yes.

20 BY MR. JOHNSON:

21 Q Let me refer you, sir, to page 755. Do you see that?
22 There's four pages on a page there.

23 A Yeah.

24 Q Do you see where page 755 is?

25 A Yes.

1 Q All right. Let me read to you, sir, from your prior
2 testimony. You can tell me whether this is what you testified
3 to, okay?

4 I'm reading from line 22. The question that was asked of
5 you, sir, is, "Typically did the truck driver stay by his
6 truck when you're running a hose off his tank?"

7 And your answer is, "Yes."

8 That was your testimony that day, wasn't it?

9 A I didn't find where you were reading, sir.

10 MR. JOHNSON: It's -- can I approach?

11 THE COURT: Yes.

12 BY MR. JOHNSON:

13 Q This is page 755.

14 A Yeah.

15 Q This is the question, line 22.

16 A Oh, there it is.

17 Q Okay?

18 A There's where I lost you. I misunderstood the number.

19 Q Well, let me help you, okay?

20 You were asked this question: "Typically did the truck
21 driver stay by his truck when you're running a hose off his
22 tank?"

23 And your answer was, "Yes."

24 You gave that answer, correct?

25 A Evidently. It says, "Yes."

1 Q All right. Thank you.

2 Now if there were a spill of perc in the area where it's
3 asphalted, around here -- that was asphalt in 1975, correct?

4 A Yes.

5 Q All right. That perc would eat up the asphalt, wouldn't
6 it?

7 A It works on it, yes.

8 Q All right. And perc spilled on asphalt would work on the
9 asphalt and cause it to disintegrate, correct?

10 A In time, yes.

11 Q Okay. And perc actually would eat -- it's a solvent. It
12 actually would, if there was a truck there and there had been
13 a spill and perc got on a truck tire, it would work on the
14 truck tire, as well, right, the rubber truck tire?

15 A I would think so.

16 Q Okay. But you never, the whole time you worked at Dyce,
17 you never saw that asphalt area impacted at all by a spill of
18 perc or other chlorinated solvents; isn't that correct?

19 A Correct.

20 Q And, in fact, not only in the loading and unloading area,
21 but everywhere else. You didn't see any perc or chlorinated
22 solvent have any impact on the asphalt; isn't that correct?

23 A I saw one area. I dropped a drum and poked a hole in the
24 side of it one day.

25 Q Okay. Where was that?

1 A That was out --

2 MR. JOHNSON: Take it out further.

3 DOCUMENT TECHNICIAN: (Complied with request.)

4 BY MR. JOHNSON:

5 Q Okay. Go ahead.

6 A I've got to -- just about in this area here.

7 Q All right. So that's, that's the asphalted area where
8 you saw tire tracks. You dropped a drum of what?

9 A Perc.

10 Q All right. And the perc spilled on the asphalt?

11 A Yes.

12 Q How much perc spilled on the asphalt?

13 A Less than a gallon.

14 Q All right. But there was a gallon of perc on the asphalt
15 there, and you saw it react with the asphalt, correct?

16 A Pardon?

17 Q You saw the perc react with the asphalt and break it
18 down?

19 A It started to, yes, and I got it cleaned up right away.

20 Q All right. But did it leave a mark on the asphalt?

21 A It left it a little bit rough.

22 Q Okay.

23 A And maybe a little bit lighter colored.

24 Q All right. Because what happens when perc falls on
25 asphalt is it disintegrates the binder between the rocks that

1 are in the asphalt, correct?

2 A Yes.

3 Q And that's exactly what happened that day when you
4 spilled the perc tank, right?

5 A Yes.

6 Q Okay. Thank you.

7 Now you talked about the concrete apron being outside
8 that warehouse, that upper warehouse or the lower warehouse.
9 I don't know why I'm getting confused on this. Can I call it
10 the garage?

11 A Pardon?

12 Q Let's call this thing the garage. Is that okay?

13 A Okay.

14 Q That's easier to do it. I think it's less confusing to
15 me, certainly. Hopefully it will be less confusing to the
16 jury.

17 So you said that there was a concrete apron outside the
18 garage the whole time that you were at Dyce, correct?

19 A Yes.

20 Q All right. And it was the same concrete apron the whole
21 time?

22 A Yes.

23 Q It never -- they never changed it?

24 A Not the apron. Not that one itself.

25 Q But you can't see the concrete apron on this particular

1 picture, can you, because it's in the shadow, right?

2 A It's in the shadow.

3 Q Let me show you what's -- let's take this one down and
4 let's show you 4044, which is in evidence.

5 Now this, if you can make this -- well, let me start.

6 This, sir, is in evidence. It's a survey of the Dyce
7 site, and it's dated in July of 1976, okay? And let's make it
8 a little bit bigger so that we can hone in on that, okay?

9 Let's make it even bigger around the warehouses, okay?

10 DOCUMENT TECHNICIAN: (Complied with request.)

11 BY MR. JOHNSON:

12 Q This shows, does it not, where the asphalt is? It's
13 marked "Asphalt," correct?

14 A Yes.

15 Q Do you see that?

16 And that's your recollection of where the asphalt was at
17 the time?

18 A Yes.

19 MR. JOHNSON: Can we have just a second, Your Honor?

20 THE COURT: Yes.

21 MR. COZZENS: That apparently is not in evidence.

22 MR. JOHNSON: Your Honor, take it down from the
23 jury.

24 THE COURT: It is.

25 MR. JOHNSON: Your Honor, I would move it into

1 evidence at this time. Apparently I was mistaken.

2 MR. COZZENS: Your Honor, we need some foundation
3 for it, certainly some foundation if we're going to ask this
4 witness something about a drawing that somebody else made.

5 MR. JOHNSON: Well, Your Honor --

6 THE COURT: What's the foundation?

7 MR. JOHNSON: Well, the foundation is, Your Honor,
8 it's a certified plat of survey, and it's a representation as
9 to what it looked like at the time, and I'm going to ask him
10 questions about it.

11 MR. COZZENS: Your Honor --

12 THE COURT: Lay the foundation through him. Ask him
13 if it accurately represents the area.

14 MR. JOHNSON: Okay. Thank you.

15 Put it back up so that just --

16 MR. GROSSBART: Your Honor, we have it down as
17 admitted last Thursday.

18 MR. JOHNSON: It is admitted. That's what I
19 thought.

20 THE COURT: Is it admitted?

21 MR. GROSSBART: 4044?

22 THE CLERK: Is it yours?

23 MR. GROSSBART: Yes.

24 THE CLERK: Yes, it's in.

25 MR. COZZENS: I'm sorry, Judge. They're right. It

1 is in.

2 MR. JOHNSON: Thank you.

3 MR. COZZENS: I still object to asking this witness
4 questions unless they lay some foundation about what it shows
5 and what --

6 MR. JOHNSON: Well, I was just about to do that.

7 THE COURT: Well, yeah. Just go ahead and do it.

8 BY MR. JOHNSON:

9 Q All right. Now this shows the two warehouses that Dyce
10 had in 1976, correct?

11 A Yes.

12 Q All right. And it shows the asphalt that you testified
13 about before, correct?

14 A Yes.

15 Q And it shows -- right here it says "Wash area." That, I
16 presume, is pointing to the drumming shed, correct?

17 A Yes.

18 Q And behind it is a chain link fence. Do you see that?

19 A I can't tell that it's a fence.

20 Q Well, it says on this drawing that there's a fence. And
21 the question I guess I have for you, sir, is --

22 A I see it now.

23 Q Do you remember there being a fence right there behind
24 the warehouse and north of the garage?

25 A No.

1 Q You don't remember a fence at all?

2 A No.

3 Q All right. And what about the fence on the east side?

4 Do you recall there being a chain link fence on the east side;
5 that is, right through here?

6 A I don't recall one there, either.

7 Q All right. Was there ever a fence that you recall in
8 that area?

9 A Not in the area you have marked.

10 Q Okay. And right here is something that connects the
11 garage to the other warehouse. Do you see that?

12 A Yes.

13 Q All right. And that says "CNOC walk." Do you see that?

14 A Yes. That was just a walk-through between the two
15 buildings.

16 Q All right. And that was concrete, correct?

17 A Concrete floor.

18 Q Okay. And -- but this does not show a concrete pad in
19 front of the warehouse. Do you see that?

20 A I see that it don't.

21 Q All right. Does that refresh your recollection as to
22 whether there was, at some point in time, not a concrete pad
23 in front of the warehouse?

24 A It was long before I went to work there in February, if
25 there wasn't.

1 Q All right. But this is a representation from 1976, so in
2 1976, despite the fact that they don't show a concrete pad in
3 front of the warehouse here, you think that there was one?
4 That's your recollection?

5 A Yes.

6 MR. JOHNSON: All right. You can take that down.

7 DOCUMENT TECHNICIAN: (Complied with request.)

8 MR. JOHNSON: Put up 5024.

9 DOCUMENT TECHNICIAN: (Complied with request.)

10 BY MR. JOHNSON:

11 Q I'm going to show you a photo, sir, that was taken by an
12 airplane flying overhead on September 6, 1977.

13 It's in evidence, 5024.

14 Now you recognize this. I think you were shown this on
15 your direct examination.

16 Why don't you pull in to the operational area.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 MR. JOHNSON: Excellent.

19 BY MR. JOHNSON:

20 Q And you see the drumming shed in this photo, correct?

21 A Yes.

22 Q All right. Now directly to the south of the drumming
23 shed, right in this area, right there, you can see that the
24 pavement is darker. Do you see that?

25 A Yes.

1 MR. JOHNSON: Get that larger for me.

2 DOCUMENT TECHNICIAN: (Complied with request.)

3 BY MR. JOHNSON:

4 Q All right. And that's liquid coming out the front of the
5 drumming shed, isn't it?

6 A I don't know, sir.

7 Q All right. Well, do you know that it isn't liquid?

8 A No, I don't know that it isn't.

9 Q Okay. So you just don't know what it is.

10 A I don't know what it is.

11 Q All right. But I presume that when you were drumming
12 product, in a drumming shed that was open on the front, that
13 it would get wet in front of that drumming shed from time to
14 time, would it not?

15 A No, not necessarily.

16 Q All right. But did you ever see it wet in front of the
17 drumming shed?

18 A From rainwater.

19 Q All right. Did you ever see it wet in front of the
20 drumming shed from liquid that came from the drumming shed?

21 A No.

22 Q Okay. And if it was rainwater there in front of the
23 drumming shed, that rainwater would pool in that area that I
24 just circled here, right?

25 A (No response.)

1 Q Rainwater would pool right there, correct?

2 A That should drain off around the end of the drumming
3 shed.

4 Q All right. Do you recall that happening, or do you
5 recall the fact that there was pooling there from time to
6 time?

7 A Repeat the question, please.

8 Q Well, wasn't there pooling there from time to time of
9 rainwater and other liquid, right in front of the drumming
10 shed?

11 A Not that I remember.

12 Q All right. Now between the drumming shed and what I've
13 now referred to as the garage is an area that is something
14 that I'm going to circle. Do you see that?

15 A Yes.

16 Q What is that?

17 A I can't tell.

18 Q You don't know what that is, right?

19 A No.

20 Q And you have no recollection of something -- because
21 we've seen this in several photos. You have no recollection
22 of what would be sitting there between the drumming shed and
23 the garage?

24 A No.

25 Q Now you testified, I believe, on direct that the perc

1 tank at this point is behind the drumming shed; is that
2 correct?

3 A Yes.

4 Q All right. It appears that there are three horizontal
5 tanks behind -- that come right out of that shadow behind the
6 drumming shed. Do you see those?

7 A Yes.

8 Q Which one is the perc tank?

9 A The one on the left.

10 Q All right. The left as we look at it, or the left if you
11 were standing, if you were looking at the back of the drumming
12 shed?

13 A Right there.

14 Q Okay. The left as we look at it.

15 A Yes.

16 Q All right. And when you would pump product -- I mean,
17 this is a lot closer to the drumming shed now than the one
18 before, correct?

19 A Yes.

20 Q All right. And at this point in time -- why don't you
21 back out a little bit.

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 BY MR. JOHNSON:

24 Q All right. At this point in time -- let me stop right
25 there.

1 You know how I asked you if there was a fence before?

2 A Yes.

3 Q Isn't this the fenceline right here, that black thing
4 right there?

5 A No. That would be the top of the berm --

6 Q Well, isn't --

7 A -- looks like.

8 Q Isn't the top of the berm right to the left of that?

9 A I don't ever remember a fence in there.

10 Q Okay.

11 A The fence came along here.

12 Q All right. But you don't ever recall a fence in the
13 drumming -- in the tank farm area, correct?

14 A No.

15 Q Okay. Now on the date of this photo, which is in 1977,
16 the berm, on the east side, has been completed, correct? It
17 comes down here?

18 A Yes.

19 Q All right. And so truck traffic can't get into the back
20 through here like they used to do, right?

21 A No.

22 Q All right. And so trucks used to pull, at this point in
23 time, when that was closed off, they used to pull into the
24 loading and unloading area, in this area, correct?

25 A Yes.

1 Q All right. And with regard to the perc tank, if you
2 wanted to fill the perc tank, a truck would pull in, and you
3 would -- and it would be in that loading and unloading area,
4 and it would fill up the perc tank, correct?

5 A Yes.

6 Q All right. And to fill up the perc tank at that point in
7 time, you used two separate hoses, correct?

8 A Yes.

9 Q All right. And you would have -- one hose would be
10 attached to the tanker truck, correct?

11 A Yes.

12 Q With that quick coupler that I showed you a little while
13 ago, and then the next one would be attached to the perc
14 tank -- to the pump that would be in the drumming shed,
15 correct?

16 A Yes.

17 Q All right. And then the hose would go out the back end
18 of the drumming shed to the perc tank, correct?

19 A Yes.

20 Q And it would -- that second hose would attach to the top
21 of the perc tank?

22 A It would connect to the -- actually be the bottom of the
23 perc hose where the valve come out of the tank -- or excuse
24 me.

25 The piping and the valve came out of the tank. Instead

1 of running over, filling through the top, they filled through
2 the bottom.

3 Q All right. And so there would be a valve at the bottom
4 of the tank?

5 A Yes.

6 Q All right. But you would attach the perc hose to that
7 valve on the bottom of the tank; is that correct?

8 A Yes.

9 Q And then once all those connections were made, you would
10 turn on the pump?

11 A Yes.

12 Q And unload the perc from the perc -- from the truck
13 through the drumming shed into the perc tank, correct?

14 A Yes.

15 Q All right. And when you were done with that procedure,
16 turned the pump off, would there be perc left in the hoses?

17 A There would be a little, and the hose from the truck,
18 we'd pick it up, the end up, and walk it down to the pump, and
19 then the pump would pump it into the tank. And then the hose
20 from the pump to the tank, we'd have to drain into a bucket,
21 and then we poured that into the tank from the top.

22 Q All right. So I understand this and get this clear in my
23 mind and the jury understands, you unhook, first of all, in
24 this procedure, you would unhook the hose that was attached to
25 the tanker truck?

1 A Yes.

2 Q That was the first thing you did?

3 A Yes.

4 Q All right. And you would pick that end of the hose up --
5 it's a heavy hose, right?

6 A They're pretty heavy.

7 Q Yeah, because it's full of perc, and perc is twice as
8 heavy as water, right?

9 A It would be about twice as heavy.

10 Q Okay. And so a gallon of perc weighs about 13 1/2
11 pounds; isn't that correct?

12 A I don't remember the weight anymore per pound -- or per
13 gallon.

14 Q All right. But you would have a heavy -- you would have
15 a 20-foot hose?

16 A Yes.

17 Q All right. So you would have a 20-foot hose that was
18 full of perc, and you'd pick that hose up, and you'd walk it
19 back to the pump.

20 A Yes.

21 Q And you'd get back to the pump in the drumming shed, and
22 it would spill back into the pump; is that correct?

23 A Yes. It would feed down into the pump.

24 Q It would feed down into the pump, and then what would
25 happen to it?

1 A The pump would pump it into the tank.

2 Q Okay. So you'd take whatever was in the hose and you'd
3 put it into the tank? It would go right into the tank, then?

4 A Yes.

5 Q It would go from the pump into the tank?

6 A Yes.

7 Q And then when you were done with that procedure, you
8 would -- then what would happen to that hose? You'd take that
9 hose off the pump?

10 A Take it off and put it away.

11 Q All right. And there was obviously some drops of perc
12 left in that hose, right?

13 A Yeah. We put caps on it.

14 Q Okay. You would put caps on it to try to keep the perc
15 from hitting the ground; is that right?

16 A Yes.

17 Q All right. And then you would -- and then what would you
18 do next? You'd go directly to the perc tank? You would go
19 directly to the perc tank, then?

20 A Then we would have the hose from the pump that went to
21 the tank --

22 Q Yeah.

23 A -- and drain it back into a bucket --

24 Q All right.

25 A -- so that you'd empty that hose, because the pump will

1 not pump a hose dry in that way.

2 Q Okay. So you would unhook the perc hose at the pump in
3 the drumming shed.

4 A Yes.

5 Q All right. And it was full of perc all the way from the
6 drumming shed all the way back to this perc tank, correct?

7 A Yes.

8 Q So that's 7 1/2, 8 gallons of perc at least, correct?

9 A It wouldn't be that much.

10 Q Why not?

11 A Because the hose was only a 2-inch hose.

12 Q All right. It was a 2-inch hose, so that's a 2-inch
13 diameter of a hose?

14 A Yes.

15 Q But it's 20 feet long, is it not?

16 A Yes.

17 Q So how many gallons would be in that hose?

18 A I can't tell you.

19 Q All right. How big --

20 A I never figured it out or measured it.

21 Q Okay. And how, how big -- what kind of pail did you dump
22 it into?

23 A Into a metal pail.

24 Q All right. How big was the metal pail?

25 A Five-gallon pail.

1 Q How tall is a 5-gallon pail?

2 A About 16 inches.

3 Q Okay. And wouldn't, in putting that -- let me back up.

4 So you'd have to -- what would happen to the end of the
5 hose that you took off the perc tank? Would you hold it up in
6 the air?

7 A Yes.

8 Q All right. And then what would you do with it?

9 A We'd drain it into a bucket.

10 Q So then you'd turn it over, and you'd drain it into a
11 bucket?

12 A Um-hmm.

13 Q All right. But -- and you'd hold the end of the hose in
14 the bucket?

15 A Yes.

16 Q All right. And how would you -- did all of the perc get
17 out of the hose when you drained it that way? Because, as I
18 understand it, on the perc tank, the hose isn't on the top of
19 the perc tank. It's on the bottom of the perc tank.

20 A Right.

21 Q So when you're talking gravity, you're talking about
22 something that's down low, right?

23 A Yes.

24 Q And so how did you drain it, if, indeed, the end of the
25 hose was down at the bottom of the perc tank?

1 A You set a bucket under that fitting and slowly open your
2 quick couplers and drain it into the bucket under the fitting,
3 right by the tank.

4 Q All right. So you'd have to drain, you'd have to drain
5 it from both ends.

6 A Yes, now, basically. And the easiest way to walk one of
7 those big heavy hoses is to roll it.

8 Q Is to roll it.

9 A Um-hmm.

10 Q So when you say "roll" it --

11 A You make a big loop in it.

12 Q All right. So you would loop it up. How would you loop
13 it?

14 A It would be just a big loop around.

15 Q Okay.

16 A And that keeps you from having to pick up so much weight.

17 Q All right.

18 A And it still keeps the hose up high.

19 Q All right. And did you, which end did you -- the first
20 end that you unhooked was in the perc -- was in the drumming
21 shed, correct?

22 A Yes.

23 Q Because you took the pump away, and actually when you
24 took the pump away, there was some perc left in the pump, too,
25 right?

1 A Maybe a cupful.

2 Q All right. And you'd have to, you'd have to -- what
3 would you do with the perc that was in the drum -- that was in
4 the pump? Excuse me.

5 A We'd drain that into a bucket --

6 Q All right.

7 A -- and then pour it back into, pour it into the bulk
8 tank.

9 Q All right. And then you would walk the hose back to the
10 perc tank?

11 A Yes.

12 Q All right. And then you'd undo the hose at the perc tank
13 down at the bottom?

14 A You loosened the hose first, but you didn't uncouple it
15 completely.

16 Q Why not?

17 A You don't want that thing coming completely apart with a
18 hose full of perc.

19 Q It did, though? Once in a while, that would happen,
20 right?

21 A It never did with me because I was careful with it.

22 Q All right. And you don't know whether that happened with
23 others or not, do you?

24 A No, I do not.

25 MR. JOHNSON: Now let me -- focus in on the garage

1 here.

2 DOCUMENT TECHNICIAN: (Complied with request.)

3 BY MR. JOHNSON:

4 Q Do you see a concrete apron in front of the garage at
5 this time?

6 A Pardon?

7 Q Do you see a concrete apron in front of the garage at
8 this point in time?

9 A I can't tell in this picture, sir.

10 MR. JOHNSON: Okay. Let's focus in on the catch
11 pond.

12 DOCUMENT TECHNICIAN: (Complied with request.)

13 MR. JOHNSON: Focus in on it more.

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 BY MR. JOHNSON:

16 Q The catch pond, as of the date of this photo, 1977,
17 appears dry; is that correct?

18 A It appears that way, yes.

19 Q All right. And there is an item that's a cross there.
20 Do you see that?

21 A Yes, I see it.

22 Q Do you know what it is?

23 A No, sir.

24 Q Do you know whether it's metal or wood?

25 A No.

1 Q You don't have any recollection of it at all; is that
2 correct?

3 A No.

4 Q All right. And there is, in this picture, right next to
5 the cross, a black area right here. Right on the edge of the
6 berm. Do you see that? I tried to put my finger right on it.
7 It's right there.

8 A Um-hmm.

9 Q Do you know what that is?

10 A No, I don't.

11 Q All right. And there is, over here, a cut. Do you see
12 that?

13 A There's a what?

14 Q Right there.

15 A I see your mark.

16 Q Okay. And that, and that, you see that cut right there,
17 correct, that black mark?

18 A Yes.

19 Q That was a man-made cut in the outside surface of the
20 berm, isn't it?

21 A No. The surface of the berm would be over to the right
22 of that --

23 Q All right.

24 A -- or the berm would be. The berm is over here.

25 Q Okay. But that cut is outside the berm, correct?

1 A Yes.

2 Q All right. Do you recall that cut?

3 A No.

4 Q Isn't it a fact that Dyce employees would empty the --
5 empty the catch pond from time to time by throwing a hose over
6 the top of that berm and draining it out into that man-made
7 cut?

8 A Not that I ever saw.

9 Q All right. You never did it, correct?

10 A No.

11 Q All right. But you don't know whether others did, right?

12 A They could have done it when I wasn't there.

13 MR. JOHNSON: Now take it out a little bit.

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 MR. JOHNSON: I wanted to show the northwest.

16 DOCUMENT TECHNICIAN: (Complied with request.)

17 BY MR. JOHNSON:

18 Q Let me ask you, sir, about this area. I'm going to
19 circle it. Do you see where I have marked the thing that I
20 just talked about which is that darker area? Then, as you go
21 to the northwest, there's an area that's devegetated which I
22 just circled. Do you see that?

23 A Yes.

24 Q All right. Let me have you circle that on here.

25 I am giving him, Your Honor, 4833.

1 And I ask you, sir, to circle that area and mark it with
2 an A and put your name on it, please. I think you need to put
3 your name on this one, too, the 4832.

4 A (Complied with request.)

5 Q Let me take a look and make sure we're on the same page
6 here.

7 A Pardon?

8 Q Let me take a look.

9 (Pause.)

10 BY MR. JOHNSON:

11 Q All right. So for the record, you've just circled the
12 area that I've circled on the computer screen and marked it
13 with an A, and I guess the question I have for you, sir, is,
14 isn't it a fact that that devegetation in that area that's in
15 the circle is caused by chemical runoff from the Dyce
16 facility?

17 A I can't say it was that cause. I don't know.

18 Q You have no idea what caused that devegetation; is that
19 what you're saying?

20 A No.

21 Q Pardon me?

22 A No.

23 Q You don't have any idea at all?

24 A No.

25 MR. JOHNSON: Pull up 5028.

1 DOCUMENT TECHNICIAN: (Complied with request.)

2 BY MR. JOHNSON:

3 Q I'm showing you what's been marked and admitted into
4 evidence as 5028, which is a photograph that was taken from
5 the air on May 14, 1979. Do you see that?

6 A Yes.

7 Q All right. And you recognize the Dyce facility. I think
8 this was shown to you on your direct. You recognize the Dyce
9 facility in this picture, correct, this photograph?

10 A Yes.

11 Q All right. Now we just got -- let me give you another
12 one. I'm going to circle here an area and ask you, sir, on
13 Exhibit 4834, for the record, to circle that as well. Put
14 your name on this one and circle that area and mark it with an
15 A, please.

16 A Mark it with an A?

17 Q Yeah, mark it with an A, please. Put your name on it.

18 A (Complied with request.)

19 Q Let me take a look.

20 (Pause.)

21 MR. JOHNSON: Very nicely done.

22 BY MR. JOHNSON:

23 Q Now that area that you just circled on that exhibit and
24 marked it with an A, that's an even larger area of
25 devegetation than we saw in the picture from two years ago,

1 right?

2 A Yes.

3 Q All right. And this larger area of devegetation was
4 caused, wasn't it, by chemicals coming out of the Dyce site
5 and killing the grass and weeds in that area?

6 A I can't say that it was -- I don't know that it was
7 chemicals.

8 Q All right. But you do recall the fact that that area got
9 devegetated in the late '70s, do you not?

10 A Yes.

11 Q You recall that, correct?

12 A Yes.

13 MR. JOHNSON: That, you know, that, focus in on the
14 perc tank -- I mean, I'm sorry, on the catch pond.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. JOHNSON:

17 Q The cross is still there. You don't have any idea what
18 that cross is?

19 A No.

20 Q All right. And there's some other things near the catch
21 pond or in the catch pond which are those things. Can you
22 tell us what those are?

23 A No, I can't, sir.

24 Q You don't know what those are?

25 A No.

1 Q And you can even see, at the end of the cross, this black
2 thing over here. This picture is more pronounced, but you
3 don't know what that is either, I take it?

4 A No.

5 THE COURT: That's what he says.

6 MR. JOHNSON: Pardon me?

7 THE COURT: That's what he said before.

8 MR. JOHNSON: Well, yeah, he said that with regard
9 to the prior picture. I was just wondering whether --

10 THE COURT: Yeah. Hopefully we won't go through
11 every picture.

12 BY MR. JOHNSON:

13 Q Well, some of the tanks have been relocated in the tank
14 farm.

15 Can you take it out?

16 DOCUMENT TECHNICIAN: (Complied with request.)

17 BY MR. JOHNSON:

18 Q And the perc tank here, I think you said on direct, is
19 the one that's behind, this long one that's behind the
20 drumming shed, correct?

21 A Yes.

22 Q All right. Why don't you circle that on this thing.

23 A (Complied with request.)

24 Q There you go. Right there.

25 And that's a 4,000-gallon tank as opposed to the

1 1,500-gallon tank that they had before?

2 A Yes.

3 Q All right. At this point in time -- why did you get a
4 bigger perc tank?

5 A Because usually the perc came in greater quantities than
6 1,500, and we'd have to finish drumming off the excess when we
7 filled the 1,500-gallon tank.

8 Q All right. And when you drummed off the excess from the
9 1,500-gallon tank, where would you drum it off to?

10 A Drum it right off the truck.

11 Q All right. And you would drum it in the loading and
12 unloading area, correct?

13 A Yes.

14 Q You'd put down pallets of drums and drum it right off the
15 perc tank?

16 A Yes. We drummed it right off -- excuse me. Drummed it
17 right off of the truck.

18 Q All right. And you would drum it into the drumming shed
19 or just on the pavement?

20 A We'd use the drumming shed and the scale.

21 Q Okay.

22 THE COURT: Let's take an afternoon recess.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE LAW CLERK: All rise.

25 (Recess taken from 14:58:15 to 15:17:36.)

1 (Open court.)

2 (Jury present.)

3 THE COURT: Please be seated.

4 You may continue.

5 MR. JOHNSON: I think everybody will be happy to
6 hear, especially Mr. Colver, that I have no further questions
7 for him, but I would like to move for the admission of
8 Plaintiffs' Exhibits 4831, 4832, 4833, and 4834, which were
9 the photographs that he personally marked up.

10 THE COURT: They're admitted.

11 MR. JOHNSON: Thank you, Your Honor.

12 MR. COZZENS: As exhibits or just for illustrative
13 purposes, Your Honor?

14 MR. JOHNSON: Well, they contain his testimony.

15 THE COURT: I'll admit them for all purposes. I
16 don't care.

17 (Exhibits 4831, 4832, 4833, and 4834 were received in
18 evidence.)

19 MR. JOHNSON: Thank you, Your Honor.

20 Thank you, Mr. Colver.

21 THE WITNESS: Thank you.

22 THE COURT: Redirect.

23 MR. COZZENS: Yes, Your Honor.

24 Would you pull up 5019, please?

25 DOCUMENT TECHNICIAN: (Complied with request.)

1 REDIRECT EXAMINATION

2 BY MR. COZZENS:

3 Q Hi, again, Mr. Colver.

4 A Hello, again.

5 THE COURT: As soon as he's done, you're over. I'm
6 going to let you go as soon as he's done, all right?

7 THE WITNESS: Make him get through it quick.

8 MR. COZZENS: I was waiting for an exhibit.

9 (Discussion off the record.)

10 DOCUMENT TECHNICIAN: (Complied with request.)

11 MR. COZZENS: This is Admitted Exhibit 5019.

12 Could you circle or put it in so you've got just the
13 tank farm going to the bottom of the lower warehouse, please?

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 MR. COZZENS: I want less than that, so let's -- I
16 want to just go to the top of the tank farm.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. COZZENS:

19 Q On cross-examination, you were asked where fluids that
20 were in the drumming shed would come out, and did you say that
21 it would be here at the back of the west side of the drumming
22 shed?

23 A Yes.

24 Q And you were also asked, then, where those fluids would
25 go and whether they would go out to the catch pond, and I

1 think you said yes to that. So would you draw where they
2 would go as far as you could see it on this picture, please?

3 A (Complied with request.)

4 MR. COZZENS: Very good. Now can we take it and
5 show them the whole catch pond and where that ditch actually
6 goes?

7 DOCUMENT TECHNICIAN: (Complied with request.)

8 BY MR. COZZENS:

9 Q In fact, in 1975, that ditch didn't go into the catch
10 pond, did it?

11 A My mistake.

12 Q Okay. Don't worry about it. I just need to make sure
13 that we straighten it out.

14 You also located on this map what you thought were the
15 three horizontal tanks, one of which was the perc tank, that
16 are just to the east of the six vertical tanks in the tank
17 farm, correct? Do you see that on this photo?

18 A Yes.

19 Q Do you know how long they were in that position?

20 A I don't remember.

21 Q Do you know why they were there instead of right behind
22 the drumming shed?

23 A Not for sure.

24 Q Okay. Fair enough.

25 Okay. You were asked about hoses that had pinholes. As

1 the maintenance person, I think you've already told us it was
2 your job to keep hoses in good repair; is that correct?

3 A Yes.

4 Q Did you ever see hoses that ruptured in ways that
5 couldn't be called a pinhole?

6 A Yes.

7 Q What did you see?

8 A Just a very fine stream of material coming out of the
9 hose.

10 Q My question was, Did you ever see hoses that ruptured in
11 a way that could not be called a pinhole?

12 A Excuse me. No, I didn't.

13 Q You never saw any hose ever have a hole in it where the
14 fluids came out bigger than a pinhole?

15 A Can I ask a question here?

16 Q Sure.

17 A Are you talking about perc hoses?

18 Q I'm talking about any hose.

19 A Any hose. Any hose, yes.

20 Q What did you see?

21 A A hydrochloric acid hose fitting.

22 Q Now when you say "fitting," was that the hose itself or
23 was it a quick coupler?

24 A That was the quick coupler.

25 Q Okay. Did you ever see a hose that had a rupture because

1 it had been run over by something?

2 A No, because if it had been run over by something, I took
3 care of it.

4 Q So you never saw anything bigger than a pinhole as a hole
5 in a hose?

6 A Not larger than a pinhole, no.

7 Q Okay. You talked about a time when you spilled less than
8 a gallon of perc on the asphalt.

9 A Yes.

10 Q You said you got it off there as quickly as you could.

11 How long was that perc on the asphalt?

12 A A maximum of 15 minutes.

13 MR. COZZENS: Okay. If -- can we go back -- well,
14 actually, let's go to 5024.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 MR. COZZENS: And let's just put it around the tank
17 farm in the lower warehouse so we can focus in on the loading
18 and unloading area, please.

19 DOCUMENT TECHNICIAN: (Complied with request.)

20 MR. COZZENS: Let's make it bigger than that. That
21 makes it too fuzzy to see what we're seeing.

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 MR. COZZENS: Bigger than that, even.

24 DOCUMENT TECHNICIAN: (Complied with request.)

25 MR. COZZENS: There we go. That will work. Thanks.

1 BY MR. COZZENS:

2 Q Okay. And we previously identified the loading and
3 unloading zone as right in here; is that correct?

4 A Yes.

5 Q If there was a significant spill of any product,
6 including perc, in that area from 1975 to 1980, where would it
7 go? And I don't want you to go clear out to the end, but
8 would it stay on the asphalt for a significant period of time?

9 A Not very long.

10 Q Okay. And if there was such a spill, was there any way
11 to clean that off of the asphalt in that area?

12 A Just rinse it off with water.

13 Q Was there a hose somewhere in that area that you could
14 use to accomplish that?

15 A Yes. There was a hose in the drumming shed.

16 Q Okay. How long would it take to hose fluid off of the
17 front of the drumming shed and down into the ditches?

18 MR. JOHNSON: Objection. Calls for speculation,
19 Your Honor.

20 THE COURT: If he knows.

21 MR. JOHNSON: It speculates that there was a spill
22 which he said he hasn't seen.

23 THE COURT: If he knows.

24 MR. DAVIS: Well, it's also vague in terms of the
25 size of the spill.

1 THE COURT: If he knows.

2 Go ahead. Do you know?

3 BY MR. COZZENS:

4 Q Go ahead. Do you know? How long would it take?

5 A I don't really know.

6 MR. COZZENS: Okay.

7 Can you pull up -- and I don't have the number here,
8 but it's the 1975 photo, again, 5019.

9 DOCUMENT TECHNICIAN: (Complied with request.)

10 MR. COZZENS: And now I want to focus on the catch
11 pond area and the area immediately to the west of that.

12 DOCUMENT TECHNICIAN: (Complied with request.)

13 MR. COZZENS: Got to be bigger than that so we don't
14 lose the resolution, please.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 BY MR. COZZENS:

17 Q Okay. You were asked some questions about the '77 and
18 the '79 photos that showed what somebody said was and what I
19 think Mr. Johnson called a cut. Do you see that same, quote,
20 cut, end quote, in this 1975 photo?

21 A Unless it would be right here.

22 Q Okay. And in this photo, you can see that that cut
23 doesn't go clear to the berm for the catch pond; isn't that
24 true?

25 A True.

1 Q Do you know what caused whatever it is that we're seeing
2 on these photos?

3 A No, I don't.

4 Q Were there any cow trails or any other animal trails out
5 there in that area?

6 A Not that I can remember.

7 MR. COZZENS: Okay. I have no further questions,
8 Your Honor.

9 THE COURT: You, sir, can step down, and you're
10 excused.

11 THE WITNESS: Thank you.

12 THE COURT: Call your next witness.

13 MR. BANKER: Soco calls Rod Hallsten, please.

14 WHEREUPON,

15 MR. RODNEY HALLSTEN,
16 called for examination by counsel for defendant, after having
17 been first duly sworn to testify the truth, the whole truth,
18 and nothing but the truth, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BANKER:

21 Q Good afternoon, Mr. Hallsten.

22 A Good afternoon.

23 Q Would you state your full name for the record?

24 A Rodney Hallsten.

25 Q It might actually work better if you got the microphone.

1 THE COURT: Yeah. Pull that over there. It will go
2 wherever you want it.

3 THE WITNESS: Rodney Hallsten.

4 BY MR. BANKER:

5 Q Great. Thank you.

6 Did you ever work at the Dyce facility?

7 A I did.

8 Q When was that?

9 A I was in Billings from November of '74 through January --
10 or December of '79.

11 Q How long did you -- what did you do for Dyce there?

12 A I started on the order desk there in November of '74.

13 Q How long were you on the order desk?

14 A Until the summer of -- June. Well, it was June of '78.

15 Q So from November of 1974 to June of '78 you were on the
16 order desk?

17 A Yes.

18 Q What did you do in your job on the order desk?

19 A I was doing the ordering of the incoming products, doing
20 the written work for the receiving of the products to put them
21 onto inventory cards, and I took the orders and actually typed
22 the orders out back then and brought them to the warehouse
23 guys to ship the material we would sell.

24 Q Could you describe the sort of paperwork that you worked
25 with doing that job?

1 A Yeah. We had a three-part purchase order, one that the
2 original was mailed to the customer -- or to the supplier,
3 rather. We retained a master copy. And then the other one
4 was held in a file to be attached to the invoice when we
5 received it.

6 And then we had a seven-part bill of lading that had the
7 different parts for the piece you left with the customer, the
8 control copies you kept in the warehouse, and I think there
9 was a couple extra copies in there.

10 Q And are all those materials things that you used in sort
11 of your recordkeeping function on the order desk?

12 A Yes.

13 MR. BANKER: Would you pull up Exhibit 5024, please?

14 DOCUMENT TECHNICIAN: (Complied with request.)

15 BY MR. BANKER:

16 Q I show you Admitted Exhibit 5024. Do you recognize what
17 this photo shows?

18 A Yeah. That's the facility.

19 Q Do you know what time frame it deals with?

20 A I'm not certain, but it's probably somewhere in that '74
21 to '78 time frame.

22 Q I'll represent to you that it's a September -- the date
23 of the photo is a September 6, 1977 photograph.

24 A Okay.

25 Q Does that look like the way that the facility looked in

1 1977 to you?

2 A Yes.

3 Q I'd like to ask you about a couple features of the site.

4 And if you could zoom in to the catch pond to loading
5 area?

6 DOCUMENT TECHNICIAN: (Complied with request.)

7 MR. BANKER: Let's maybe back out a little bit.

8 DOCUMENT TECHNICIAN: (Complied with request.)

9 MR. BANKER: There we go.

10 BY MR. BANKER:

11 Q Did you have occasion to go out into the loading and
12 unloading area?

13 A Yes.

14 Q Could you point it out on the picture here by touching
15 the screen?

16 A (Complied with request.)

17 Q And are you also familiar with the berm?

18 A Yes.

19 Q Could you outline the berm as it existed in 1977?

20 A (Complied with request.)

21 Q Thank you.

22 Are you able to locate the perc tank in 1977 on this
23 photograph?

24 A Not specifically, but it was -- I think there was three
25 tanks here. It would have been one of those.

1 Q Behind the drumming shed?

2 A Yes.

3 Q Do you know which of the three tanks it was?

4 A I do not.

5 Q Okay. In the 1977 time frame, how was the perc -- do you
6 know how the perc tank was filled?

7 A The delivering carrier would usually come in with his
8 tank truck and pump directly into the tank.

9 Q From the loading and unloading area?

10 A Yes.

11 Q And in that process, was there any piping that was used
12 to transfer the perc into the bulk perc tank off of the
13 supplier truck?

14 A Yes.

15 Q Where was that?

16 A Well, there was a quick coupler on the truck where they
17 would hook up the hose to a line that led to the perc tank
18 that was being filled.

19 Q And where did that line rest?

20 A It went over the berm and through the drumming shed.

21 Q I'd like to talk to you a little bit -- are you familiar
22 with the distribution that Dyce did of perc in the 1977 time
23 frame?

24 A Yes.

25 Q Because it was something that you handled on the order

1 desk?

2 A Yes, we would take orders.

3 Q How often would you receive a bulk shipment of perc from
4 a supplier?

5 A Well, it was probably on the -- a tank truck per quarter.

6 Q And how large a delivery would you take from a supplier
7 per quarter?

8 A About 45,000 pounds.

9 Q How many gallons would that translate into?

10 A Roughly 4,000.

11 Q 4,000 gallons once a quarter, roughly speaking?

12 A Yes.

13 Q In that time frame?

14 A Yes.

15 Q Are you able -- are you familiar with the volume of the
16 other products that Dyce was dealing, say, in the '75 to '77
17 time frame?

18 A Yes.

19 Q Could you compare the -- how much -- what was the volume
20 of perc compared to the volume of, say, acids that Dyce
21 handled?

22 A It was a much lower volume.

23 Q How about compared to, say -- do you know what BTEX is?

24 A No.

25 Q Do you know what --

1 A Oh, B-T-E-X?

2 Q B-T-E-X.

3 A Yeah. It's toluene, xylene, and b- --

4 Q Compared to toluene and xylene?

5 A Yeah.

6 Q The way you said it.

7 A Yeah, yeah. But it was -- we sold more xylene than we
8 did perc.

9 Q Okay. Would it be fair to say that perc was a relatively
10 low-volume product?

11 A Yes.

12 Q Do you know how much perc cost in the 1975 to '77 time
13 frame?

14 A I think it was in the range of 12 to 15 cents a pound.

15 Q How would that translate into a per-gallon cost?

16 A \$2.30, \$2.50 a gallon, I believe.

17 Q Could you compare that to, say, a gallon of hydrochloric
18 acid?

19 A Yeah. You mean pricewise?

20 Q Pricewise.

21 A Back then, hydrochloric was probably 60 bucks a ton, so
22 3 cents a pound.

23 Q So perc was much more expensive?

24 A Yes.

25 Q Do you recall a problem while you were on the order desk

1 with perc inventory?

2 A Yes.

3 Q Could you tell us about that?

4 A We were doing our inventory, and during the course of the
5 inventory, we determined that we had a discrepancy in our bulk
6 tank of perchloroethylene.

7 Q Let's take that one step at a time.

8 A Okay. Yep.

9 Q What kind of inventory were you doing?

10 A It was a quarterly inventory.

11 Q And what is a quarterly inventory in the Dyce facility in
12 the '75 to '77 time frame?

13 A Basically the guys in the warehouse were given a list of
14 the products to count and/or physically measure. Bring it in.
15 It would be compared against the physical records that we
16 kept.

17 Q Roughly how many products was Dyce handling in the '75 to
18 '77 time frame?

19 A Oh, routinely, probably 30 to 40.

20 Q Different products?

21 A Yes.

22 Q And would a quarterly inventory encompass all of those
23 products?

24 A Yes, yes.

25 Q What was the purpose of doing a quarterly inventory?

1 A To make sure that we were -- that we had what we believed
2 we had, according to our hand-, at that time, early on, the
3 handwritten cards.

4 Q So it served an accounting purpose?

5 A Yes.

6 Q Cost control purpose?

7 A Yes.

8 Q When you started to talk about the inventory discrepancy,
9 you said it was in the bulk tank. What do you mean by that?

10 A Well, we also had -- we also inventoried drums of
11 perchloroethylene on the site, and the issue was with the
12 volume of perc that we had in the bulk tank. The drums were
13 in agreement with our inventory records.

14 Q Okay. Were you able to determine, at least initially,
15 the amount of the inventory discrepancy?

16 A Yes.

17 Q How much was it?

18 A Well, to the best of my recollection, it was greater than
19 250 gallons and under 1,000.

20 Q 250 to 1,000 gallons of perc was missing from your
21 inventory?

22 A Yes.

23 Q When, to the best of your ability, did you discover this
24 inventory discrepancy?

25 A My recollection was in the spring of -- in that time

1 frame, and I don't -- I'm sorry, I can't, I don't remember the
2 specific year, but in that '74 to '78 time frame.

3 Q Well, and let's walk through that, because I want to
4 understand what you're saying.

5 When you say the "spring," and we're talking about a
6 quarterly inventory, when would you do your spring inventory
7 at the Dyce facility?

8 A Well, it would be April 30 -- or March 30, rather.

9 Q So somewhere in the vicinity of March 30?

10 A Yes.

11 Q And you said from 1974 to 1978?

12 A Yes.

13 Q What makes you, what makes you identify that time frame?

14 A Well, because that's when I was on the order desk, and I
15 was involved with the inventories.

16 Q And you have a clear recollection that this was while you
17 were on the order desk, I take it?

18 A Yes.

19 Q 1974, you started on the order desk in November?

20 A Yes.

21 Q Did you undergo any training when you first started?

22 A Yes.

23 Q What kind of training?

24 A Well, I worked with Monte, who was temporarily filling in
25 that position, learning the functions and the duties of that

1 job.

2 Q Who is Monte?

3 A Monte Naff at that time was our salesman that was working
4 in the office to cover the vacant position.

5 Q So you came in in November of 1974 onto the order desk;
6 for a period of time, worked with Monte. How long did you
7 work with Monte?

8 A Oh, it was probably, off and on, over the first six
9 months.

10 Q Do you recall whether this inventory discrepancy happened
11 during the time that you were working with Monte?

12 A Yeah. I do not believe it did.

13 Q So does that enable you to rule out 1974 as a candidate?

14 A Yes.

15 Q Okay. So let's focus on '75, '76, and '77. Is there
16 anything else that you recall that could help us with that
17 date to be more specific?

18 A No.

19 Q Do you recall whether Dyce had a bulk tank in 1975 for
20 perc?

21 A I do not.

22 Q Do you recall whether they had one in '76?

23 A Yes.

24 Q How about '77?

25 A Yes.

1 Q So at least from '76 on, your recollection is that there
2 was a bulk perc tank?

3 A Yes.

4 Q Does that rule out 1975 as a candidate?

5 A Yes.

6 Q So we're down to 1976 and '77.

7 Is there anything else that we can point to or turn to
8 that would help us narrow in on a date?

9 A Not that I recall.

10 Q Was there -- well, strike that.

11 Once you had identified this inventory discrepancy of
12 250 gallons to 1,000 gallons, what was your reaction?

13 A I was nervous.

14 Q Why were you nervous?

15 A Well, it was a large loss, dollar value, and being new on
16 the job, I didn't know what to expect, I guess.

17 Q Well, and, you know, I think you said that perc was like
18 \$2.50 a gallon?

19 A Yes.

20 Q And so on the low end, at 250 gallons, what are we
21 talking about in terms of dollars?

22 A Five or 600 bucks.

23 Q So on the low end, 500 or 600 bucks. On the high end,
24 \$2,000 or \$2,200?

25 A Right. Yeah, yes. Yes.

1 Q Okay. What were you concerned about? Why did that
2 concern you?

3 A Well, I was responsible for maintaining those levels and
4 checking them, and I was concerned for myself. I wasn't doing
5 a good job.

6 Q So if there's 250 to 1,000 gallons missing from
7 inventory, that doesn't reflect well on you?

8 A No.

9 Q But you weren't out in the warehouse area.

10 A No.

11 Q So in what -- I'm trying to just understand how would it
12 reflect badly upon you.

13 A Well, usually when we had the inventory discrepancies, we
14 would find them and resolve them, but this was one of my first
15 instances that I had where we actually had a write-off.

16 Q Okay. Before you got to the write-off stage, did you do
17 anything to investigate what the cause of this inventory
18 discrepancy was? I think you mentioned that you checked some
19 paperwork.

20 A Yes.

21 Q And you ruled out a paperwork error.

22 A Yes.

23 Q Was there anything else that you did?

24 A Well, yeah. We, you know, checked our records, our
25 physical records that we had to make sure there wasn't any

1 errors in there. We measured the tank again to ensure that we
2 had gotten a good reading on our physical inventory of the
3 bulk perc.

4 Q How does someone measure that? You said "measure" the
5 tank. How does someone do that?

6 A Back then, back then it was a manual operation of taking
7 a stick or a measured stick and dipping it into the tank
8 looking for the liquid level of the tank.

9 Q So are we talking about an unpainted piece of wood?

10 A Yes.

11 Q And that's long enough to go from the top of the tank to
12 the bottom of the tank?

13 A Yes.

14 Q And then how do you use that to determine -- what is that
15 telling you? When you pull it out of the tank, I take it it's
16 wet?

17 A Yeah. It tells you the number of inches, and then the
18 tanks are calibrated, and you interpret the inch reading to
19 volume.

20 Q Was that an accurate way to measure liquid in the tank?

21 A Fairly accurate, yes.

22 Q Would it -- I mean, was the stick calibrated at all?

23 A Yes.

24 Q Like a yardstick?

25 A Yes. Well, yes. It wasn't a yardstick, but it was

1 calibrated.

2 Q So you could see, and based on the measurement that you
3 took off of the stick, you could calculate the volume of
4 liquid in the tank?

5 A Yes.

6 Q And you did that here after you discovered the inventory
7 discrepancy?

8 A Yes.

9 Q And what did you find?

10 A That we were -- again, that the inventory was off.

11 Q Okay. Was it still off by the same amount, or did the
12 amount change over time?

13 A No.

14 Q So it was still, to the best of your recollection, 250 to
15 1,000 gallons?

16 A Yes.

17 Q Did you do anything else to try and understand why you
18 were off?

19 A Yeah. Well, we, you know, checked all of the receiver
20 reports that are made to make sure that it coincides with what
21 we were billed, so that we determined what was received and it
22 was done properly, and that was it.

23 Q Okay. Had you had other inventory discrepancies with any
24 kind of chemical --

25 A Yes.

1 Q -- while you were on the order desk?

2 A Yes.

3 Q And compared to the volume, this 250 to 1,000 gallons of
4 perc, how does that compare to these other inventory
5 discrepancies that you had experience with?

6 A Most others were smaller volume.

7 Q How many gallons?

8 A Fifteen, ten, you know, 20 gallons here.

9 Q So was this an unusual discrepancy for inventory?

10 A Yes.

11 Q What did you do after you checked the paperwork,
12 resticked the tank? What happened next?

13 A When Mr. Dyce returned to the office, I went to him with
14 the findings of the inventory and gave it to him.

15 Q Now you said when Mr. Dyce "returned." Returned from
16 where?

17 A Arizona.

18 Q When would he go to Arizona?

19 A Usually in the fall.

20 Q Did he have a house down there?

21 A Yes.

22 Q And how long would he stay down there once he went down
23 there in the fall?

24 A He would go for four or five months.

25 Q So November to April, March?

1 A Yes.

2 Q And so is that -- is Quentin Dyce coming back what you're
3 using to --

4 A Yes, yeah. Yes. He would -- the time that this
5 happened, he was coming back from Arizona when I presented him
6 the findings of our inventory discrepancy.

7 Q Okay. We've talked about trying to narrow in and get the
8 best recollection that you have of a date. Does Quentin Dyce
9 coming back from Arizona help us to rule out either '76 or '77
10 as a date?

11 A No, not to my knowledge.

12 Q Okay. Did Quentin Dyce have any reaction when you gave
13 him this information?

14 A Yeah. He was extremely upset.

15 Q Why?

16 A That we had a loss, and that he made the comment that
17 we're going to get out of the perc business if we can't handle
18 it.

19 Q At that point in time, did you -- you had no explanation,
20 I take it, as to what the inventory discrepancy was caused by?

21 A No.

22 Q Did you ever develop an explanation?

23 A No.

24 Q Did you ever hear anything more about where the
25 investigation went?

1 A No.

2 Q So what did you do with this inventory that you're
3 holding on your books that you don't have any product for out
4 in the yard?

5 A After Quentin reviewed it, the product was written off.

6 Q Did you give any consideration -- do you need some water?

7 A Yeah.

8 Q Did you give any consideration in your investigation to
9 whether the perc had been stolen?

10 A Yes.

11 Q What did you conclude?

12 A Well, it was -- perc had a limited sale audience, I guess
13 is the word there. There wasn't many customers. It was
14 heavy, and it was hard to handle. A drum would weigh
15 700 pounds, so it would have been very difficult for someone
16 to have, you know, thrown it on a pickup and hauled it away.

17 Q So when you say a drum would weigh 700 pounds, are we
18 talking about a standard 55-gallon drum?

19 A Yes.

20 Q And if that's filled with 55 gallons of perc, it weighs
21 700 pounds?

22 A Yes.

23 Q So how do you even move a 700-pound drum of perc?

24 A A forklift.

25 Q A forklift can handle that?

1 A Yes.

2 Q So you've got to have a forklift to move it. Can you put
3 a 700-pound barrel into the back of a pickup truck, or do you
4 have to go with something heavier?

5 A No, I don't think it's possible for one person to put a
6 700-pound drum in a pickup.

7 Q Okay. So had there been any other episodes where
8 chemical had been stolen at the Dyce facility?

9 A No.

10 Q Was there ever, in your experience --

11 A No.

12 Q -- any incident of that?

13 A No.

14 Q Did you consider whether there had been a spill of perc?

15 A I'm sure we did. I don't recall asking.

16 Q So it wasn't part of what you did as part of your
17 investigation?

18 A No.

19 Q Were there problems, generally speaking, with the perc
20 inventory?

21 A Not generally, but, I mean, deviations of, you know, a
22 few gallons, but not to the level that this one was.

23 Q What would you attribute those deviations in the perc
24 inventory to?

25 A Evaporation sometimes.

1 Q Was perc a chemical that had a high volatility so that it
2 would evaporate easily?

3 A Yes.

4 Q And was the tank, you know, the tank that you described
5 on the exhibit here, was that open to the air?

6 A It would have been vented.

7 Q And why is that?

8 A Well, when you're either filling into or taking out of
9 the tank, you can't -- you have to have a vent to allow the
10 product to flow in or out of the tank.

11 Q Other than this inventory discrepancy of perc in, I think
12 we've narrowed it down to, the '76 to '77 time frame, were
13 there any other significant inventory discrepancies of perc
14 while you were on the order desk?

15 A No, not that I -- no.

16 Q Did you ever hear of any significant inventory
17 discrepancies of perc?

18 A No.

19 Q Now you're aware, as you sit here today, of the claim
20 that the EPA has made for the Lockwood site?

21 A Yes.

22 Q And were you aware that that was happening back in the
23 year 2000?

24 A Yes, I believe I was.

25 Q After you left the order desk in 1978, did you continue

1 to work for the Dyce company?

2 A Yes. I moved out of state to North Dakota.

3 Q Okay. And what did you do in North Dakota?

4 A I initially went over there as a salesman and ran the
5 warehouse. Did the order-taking. Did the delivering. Was a,
6 I guess, chief cook and bottle-washer.

7 Q Okay. How long were you in North Dakota?

8 A Ten years.

9 Q And what did you do after that?

10 A I moved to Ogden, Utah.

11 Q Still working for Dyce?

12 A At that time, it was HCI. We were bought, I believe, in
13 '88.

14 Q But still, still, when you moved to Utah, working for the
15 same company, essentially?

16 A Yes.

17 Q And what were you doing in Utah?

18 A I was the branch manager there.

19 Q Okay. So from, you know, '78 up through -- what year in
20 Utah were you working?

21 A '78, you said?

22 Q Well, you left the order desk in '78 in Billings?

23 A Yes.

24 Q And working in Utah takes us up through what year?

25 A Yeah. Oh, to the present.

1 Q To the present.

2 A Yes.

3 Q So that's where you currently are now?

4 A Yes.

5 Q And so in the 2000 time frame, when you learned that
6 there was an EPA issue with the Lockwood site, you were in
7 Utah?

8 A Yes.

9 Q As the branch manager out there?

10 A Yes.

11 Q And what involvement did you -- were you contacted about
12 that, or how did you find out about that?

13 A No. I received an e-mail, I believe, but that was it.

14 Q And did anyone ask you anything more about it, or what
15 did you learn about it at that point?

16 A No one asked any more, and I had heard that we had a
17 problem at the site and there was perc.

18 Q Okay. But I take it no one interviewed you or talked to
19 you as part of the EPA investigation?

20 A No.

21 Q When was the first time that you told anybody about this
22 inventory discrepancy?

23 A It would have been December of 2004.

24 Q And what was the occasion for talking about the inventory
25 discrepancy?

1 A I had been -- I came to Billings for a Christmas party,
2 and Dave Warne asked me to meet with Tom Mielenhausen on
3 Sunday morning for breakfast.

4 Q Okay. And I take it you did that?

5 A I did.

6 Q And what did you tell him?

7 A I -- he asked if I was -- knew of any problems with
8 inventory of any kind at all, and I said yeah. I related the
9 story that I just presented here.

10 Q And I take it what you've told us here today is
11 essentially what you told Mr. Mielenhausen about the inventory
12 discrepancy?

13 A Yes.

14 Q Has anyone ever -- that, I take it, is your recollection
15 of an inventory discrepancy?

16 A It is.

17 Q And not something Mr. Mielenhausen suggested to you?

18 A Not at all.

19 MR. GROSSBART: Objection. Leading.

20 THE COURT: Yeah, it was.

21 BY MR. BANKER:

22 Q Can you explain why it was that the first time you told
23 someone about the inventory discrepancy was 2004 when you knew
24 that the EPA was interested in the Lockwood site for a problem
25 with perc back in 2000?

1 A I don't have a good explanation other than it just went
2 over my head. I didn't think about it.

3 Q Had you had occasion to be involved in the operations in
4 the Billings facility at Dyce at any point after you left in
5 1978?

6 A No.

7 Q Did you know that they continued to handle perc or not?

8 A Yes, they did.

9 Q But you didn't know what, what the history of the
10 operations had been from 1978 on?

11 A No.

12 MR. GROSSBART: Your Honor, the leading is just
13 getting out of hand, I think.

14 THE COURT: You know, it is, but I'm going to give
15 you some leeway. Throttle it back a little bit. Say, "Can
16 you tell us whether or not," or something like that.

17 MR. BANKER: Sure.

18 BY MR. BANKER:

19 Q But I take it -- well, since then, have you spoken with
20 anyone else about the inventory discrepancy?

21 A Nothing more than what has been involved in this trial.

22 MR. BANKER: Okay. I have nothing further. Thank
23 you.

24 THE COURT: Mr. Grossbart, you may cross.

25 MR. GROSSBART: Thank you, Your Honor.

1 | CROSS-EXAMINATION

2 BY MR. GROSSBART:

3 Q Now at the beginning of your direct examination, you
4 explained a little bit about what a perc tank was on a 1977
5 photo.

6 A Yes.

7 Q All right. Now you started in November of '74, however,
8 right?

9 A Yes.

10 MR. GROSSBART: Could you put up Exhibit 5019,
11 please?

12 | DOCUMENT TECHNICIAN: (Complied with request.)

13 BY MR. GROSSBART:

14 Q This is a photo from 1975.

15 And let's blow up -- yeah. Let's just get -- there you
16 go.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. GROSSBART:

19 Q Where is the perc tank in that photo?

20 A (No response.)

21 Q You're on the order desk at this time, right?

22 A Yeah. I don't see one. I don't see one.

23 Q You don't see one?

24 A No.

25 Q Where is the loading and unloading area in this photo?

1 A (No response.)

2 Q Where is the loading and unloading area on this photo for
3 the tanks right by -- for these tanks? Where do you load and
4 unload for those tanks at this point in time?

5 A It would have been in that same area.

6 Q Down where you draw your mark?

7 A Oh, let's see.

8 Q I'm sorry, sir?

9 A Pardon?

10 Q Where do the trucks who are servicing these tanks load
11 and unload their product in 1975, the date of this photo?

12 A To the best of my knowledge, it was right in here.

13 Q All right. And did you ever see any trucks going up in
14 here to service any one or more of those tanks?

15 A I did not.

16 Q You never saw that.

17 A No.

18 Q Did you ever actually see the loading or unloading of --
19 let me rephrase that.

20 Did you ever actually see a perc delivery while you were
21 on the order desk?

22 A Yes.

23 Q All right. How many times?

24 A Oh, I don't know. Maybe a couple. Twice.

25 Q Do you recall giving your deposition in this case a few

1 years back?

2 A Yes, yes.

3 Q It was out in Ogden, Utah, right?

4 A Yes.

5 Q Do you remember me?

6 A Yes.

7 Q Okay. And we sat around a table, and you swore to tell
8 the truth?

9 A Yes.

10 Q All right.

11 (Discussion off the record at counsel table.)

12 BY MR. GROSSBART:

13 Q I'm going to hand you -- by the way, you were given an
14 opportunity to read and sign this deposition, too, weren't
15 you?

16 A Yeah. Yeah. Yes.

17 Q Do you remember?

18 A I don't remember signing one.

19 Q That wasn't 30 years ago, but you don't remember -- okay.

20 A Yeah.

21 Q Well, in any event, Mr. Mielenhausen was there defending
22 you, right?

23 A Yes.

24 Q And you don't recall if he asked you to read and sign
25 your deposition?

1 A Yes, I do.

2 Q He did ask you to do that, or he didn't ask you to do
3 that?

4 A I don't remember.

5 Q All right. So have you seen the transcript of your
6 deposition before?

7 A Yes.

8 Q And putting aside whether you read and signed it, do you
9 recall seeing anything wrong or incorrect about it?

10 A No.

11 MR. GROSSBART: Okay. May I approach?

12 THE COURT: Yes.

13 BY MR. GROSSBART:

14 Q (Handing.) Do you recall being asked this question and
15 giving this answer, beginning on line 20 of page 33?

16 Question, "During 1974 to 1980, did you have any
17 understanding of any of the chemical handling practices and
18 procedures that were in place at the Dyce Billings facility?"

19 Answer, "Bare minimum. I mean, I -- I wasn't out there,
20 and that was operations, and I was busy in the office."

21 Do you recall --

22 A Yes.

23 Q -- hearing that question and giving that answer?

24 A Yes.

25 Q And then on page 41, beginning at line 14, do you recall

1 hearing this question and giving this answer?

2 "Okay. Did you personally ever observe, with respect to
3 any three of those chemicals, did you personally ever observe
4 the transfer of chemical from a delivery truck to either the
5 big tank or 55-gallon drums during 1974 to '80?"

6 And you said you don't remember. Do you see that?

7 A Yeah. That says, "It's possible."

8 Q I understand it's possible, but you didn't remember at
9 the time? That's what you said, right?

10 A Yes.

11 Q And now you do?

12 A Yes.

13 Q What refreshed your recollection as to that?

14 A Well --

15 Q I'll withdraw the question.

16 You said perc was delivered, on average, quarterly. Did
17 I hear that right?

18 A Yes.

19 Q And you said the average quarterly delivery was
20 4,000 pounds?

21 A Gallons.

22 Q Excuse me. 4,000 gallons.

23 A Yeah.

24 Q Are you sure about that?

25 A Well, it was 45,000 pounds. I think it's 12 pounds to

1 the gallon, so it would have been around 4,000.

2 Q All right. You only had a 1,500-gallon perc tank at that
3 time; isn't that right?

4 A Yes. Yes.

5 Q Assuming the perc tank was bone dry, where did the other
6 2,500 gallons go that you took delivery of?

7 A It would be drummed.

8 Q How many drums is that?

9 A Fifty-five divided by 2,500 -- I mean 55 into 2,500, so
10 about every thousand gallons is 20 drums.

11 Q So about 50 drums?

12 A Yeah, 25 would have been -- 40 -- yeah. Yes.

13 Q All right. Bear with me, please.

14 Same place, Ogden, Utah. Same deposition. You were
15 asked this question. We were talking -- this is on page 118,
16 beginning at line 15, following a question about the perc
17 tank.

18 Question, "Do you have any knowledge as to its size?"
19 And if you want to just get yourself oriented, the question is
20 about the size of the perc tank while you were on the order
21 desk.

22 Answer, "It was less than 3,000 gallons."

23 Question, "Because that was a truckload?"

24 "Yes, and it would not hold a full load."

25 So has something triggered your recollection --

1 A Well, my math is better.

2 Q Hang on.

3 -- that the quarterly deliveries were 4,000 gallons as
4 opposed to 3,000 gallons?

5 A It was one truckload quarterly.

6 Q Well, you testified before that a truckload was
7 3,000 gallons. I'm just trying to understand what has
8 caused -- what has refreshed your recollection differently
9 than what you testified to previously.

10 A It has to be my math. I'm sorry.

11 Q So it was just a mathematical error?

12 A Yes, because it was a truckload a quarter, and if I said
13 it was 3,000, I was wrong.

14 Q I'm going to hand you another transcript, because you had
15 a subsequent opportunity after your deposition to testify
16 again in this case. Do you recall that?

17 A Yes.

18 Q You took the same oath to tell the truth, right?

19 A Yes.

20 Q If you go to the transcript that I've handed you on
21 page 611, you were asked this question and gave this answer,
22 beginning at line 14 of page 611:

23 "How much perc was delivered in the mid '70s in a
24 quarterly delivery?"

25 Answer, "Probably 3,000 gallons."

1 So you were wrong on that date, too?

2 A Apparently.

3 Q You were on the order desk until June of '78.

4 A Yes.

5 Q And you believe that the discrepancy that you discovered,
6 this 250- to 1,000-gallon discrepancy, was discovered on the
7 heels of a first-quarter inventory?

8 A Yes.

9 Q I take it by that, you're telling us that the
10 discrepancy, whatever caused the discrepancy, had to happen
11 between January 1 and March 31 of some calendar year?

12 A Yes.

13 Q So it could have happened in the first quarter of '78 as
14 well as '77 or '76 or '75, right?

15 A It's possible, yes.

16 Q You were still on the order desk?

17 A Yes.

18 Q Okay. As a matter of fact, the only reason you're
19 picking these years is because that's the entire period you
20 were on the order desk where you were there for a spring
21 quarter.

22 A Yes.

23 Q Right?

24 You have told us that you approximate the timing of this
25 inventory discrepancy that's limited only by the number of

1 first quarters you happened to be working at Dyce Billings,
2 right?

3 A Yes.

4 Q All right. Now the 250 to 1,000, is that -- that's a
5 memory that has stuck with you all these years? Is that
6 something that you've sort of deduced going back and thinking
7 about this?

8 A I think it was through a process of deduction.

9 Q All right. So you don't really -- so you don't have a
10 memory of that? That's something you deduced later?

11 A Pardon me?

12 Q You don't have memory of a 250- to 1,000-gallon inventory
13 shortage? You've pieced it together since then?

14 A No, I do have a memory that we had an inventory shortage.

15 Q No, my focus is the 250 to 1,000, though. That's
16 something you've sort of deduced and put together?

17 A Yes.

18 Q And that's a series of deductions and the thinking about
19 this that you've done since the 2004 Christmas party, right?

20 A Yes.

21 Q All right. So when you sat down with Mr. Mielenhausen on
22 a Sunday morning after this Christmas party, 250 to 1,000
23 wasn't in your head at that time, was it?

24 A No. We never talked about it.

25 Q All right. That's something that came later?

1 A Yes.

2 Q You simply responded, then, to a question that
3 Mr. Mielenhausen asked you about, "Was there ever an
4 inventory" -- well, let me strike that.

5 Exactly what question did Mr. Mielenhausen ask you that
6 stimulated your answer? Why don't we start with that. As
7 best you recall, what words did he say to you?

8 A He just told me he was interviewing people that worked
9 back in that era to see if there was any information about
10 anything with any perc losses.

11 Q Are those the words Mr. Mielenhausen used?

12 A Not exactly, I'm sure.

13 Q Well, as best you can recall. I know it's a long time
14 ago, and it's tough to remember back that far, to 2004, but
15 I'd like to know as best you can recall what words he said.

16 A I don't recall specifically.

17 Q All right. Did he use the word "inventory"?

18 A No.

19 Q And what did you say to him? "I remember an inventory
20 shortage," or, "I remember an inventory shortage" plus
21 something else?

22 A Well, I remembered, I told him I remembered that Quentin
23 Dyce said we were going to, as a result of having an inventory
24 issue, that we were going to get out of the perc business.
25 That part was indelibly in my mind.

1 Q Who else -- was that something Mr. Dyce said just to you,
2 privately?

3 A Yes.

4 Q You know he's said that since, don't you? You've seen
5 documentation, have you not?

6 A Yes, yes.

7 Q Ten years later, Mr. Dyce announced to several people,
8 apparently with some degree of frustration or consternation,
9 that the company was going to get out of the perc business.
10 You know that, right?

11 A Yes.

12 Q So this was really the first time that happened, and it
13 happened again ten years later, Mr. Dyce announced, making
14 that announcement?

15 A Yes.

16 Q And obviously Dyce did not get out of the perc business
17 in the mid '70s.

18 A No.

19 Q Did not get out of the perc business in the mid '80s,
20 either?

21 A No.

22 Q Now you said you were nervous when this thing arose?

23 A Yes.

24 Q You were not -- you were not afraid of Mr. Dyce, were
25 you?

1 A No.

2 Q And if this happened later in your period of employment
3 on the order desk, you weren't even a new employee when it
4 happened?

5 A Correct.

6 Q '77, '78, you had been there at least a couple years.

7 A (Nodded head affirmatively.)

8 Q You told us on direct -- that was, I take it, a yes?

9 A Yes.

10 Q You were nodding.

11 A Yeah.

12 Q I don't know if -- all right.

13 You said that after you saw or recognized that there was
14 an inventory discrepancy, you resticked, I think was the word,
15 the perc tank?

16 A Yes. Not me personally.

17 Q Who did that?

18 A Someone in the warehouse would have done that.

19 Q Okay. Who?

20 A It would either have been Dick Bender, Delmer Hutchinson,
21 or Dick Colver.

22 Q Well, did you tell somebody, "Go restick the perc tank"?

23 A Yes. Typically it would have been Dick Bender.

24 Q Did you go with him?

25 A No.

1 Q Have you ever seen the perc tank sticked?

2 A I don't recall that I had.

3 Q All right. But you understand it's putting a dip stick
4 in the top of the perc tank?

5 A Yes.

6 Q Is that the hole where you actually filled the perc tank
7 from deliveries coming in?

8 A No, no.

9 Q What's that, through the vent?

10 A It would have been another opening in the tank.

11 Q All right. And when that didn't answer any questions,
12 you, I think you testified under direct, you looked at, in
13 fact, purchase records, meaning purchase records from your
14 suppliers?

15 A Yes.

16 Q And sales records, meaning paperwork having to do with
17 sales to customers --

18 A Yes.

19 Q -- local drycleaners, what-have-you?

20 A Yes, yes.

21 Q How much perc was supposed to be on hand when you did
22 this inventory?

23 A I don't recall.

24 Q You have no idea?

25 A (No response.)

1 Q Do you understand my question?

2 A You're asking what the records had indicated would have
3 been on there.

4 Q Well, in order for you to realize you have an inventory
5 shortage, you have to have a record that leads you to believe
6 that you have, just to pick a number, 750 gallons -- well, I
7 have to pick a bigger number -- 1,500 gallons on hand.

8 Somebody takes an inventory, and what's actually out in the
9 yard is 500 gallons. You say, "Oh, my God. I have a
10 1,000-gallon shortage." That's kind of how it works, right?

11 A Yes.

12 Q How many gallons did your records, at the time of the
13 shortage, based on the records, show that you had?

14 A I don't recall.

15 Q Well, did you have any perc at the time of this
16 discrepancy, or were you totally out of it?

17 A We had product.

18 Q I beg your pardon?

19 A We had some product.

20 Q How much?

21 A I don't recall.

22 Q Do you have any -- can you even approximate it with a
23 range comparable to the range of 250 to 1,000 that you deduced
24 for your shortage? Can you do the same kind of deductions for
25 me on that?

1 A No.

2 Q But you had some?

3 A Yes.

4 Q That's all you can say?

5 A Yes, because I know we had to remeasure the tank.

6 Q Beg your pardon?

7 A Because they had to stick the tank again, which would
8 lead me to believe there was something in there.

9 Q Well, you could stick the tank and the stick could come
10 out dry to tell you the tank's empty, couldn't you?

11 A Yes.

12 Q All right. The tank wasn't empty?

13 A To the best of my knowledge, it wasn't.

14 Q All right. What happened the next day, and the day
15 after, and the day after, when people ordered, customers
16 ordered perc that you didn't have? Did you miss any orders?
17 Did any customers have to go without perc?

18 A Not to my knowledge.

19 Q Well, if you're getting 3,000 gallons every quarter and
20 it's now towards the end of the quarter, or is the end of the
21 quarter, and you've lost as much as 1,000 gallons, how could
22 you service your normal customers without going out and buying
23 a replacement batch of perc?

24 A Well, I'm sure we did order more, and we had product in
25 the tank, and we could have delivered them drums to get by.

1 Q Do you recall calling one of your suppliers and saying,
2 "Oh, my God. We've got -- I'll figure this out later, but
3 I've got to get perc on hand"? Did that happen?

4 A No, I don't recall that.

5 Q All right. So when you say, "I'm sure that's what I
6 would have done," well, you don't really have a recollection
7 of actually doing that?

8 A No.

9 Q And you don't have a recollection of telling any customer
10 they have to wait a few extra days because you're out of perc
11 unexpectedly or anything like that?

12 A No.

13 Q Now you said you explained to Mr. Dyce, when he came back
14 from Arizona, that you were aware of a shortage, and you sort
15 of kind of laid it out for him; is that right?

16 A Yes.

17 Q Now when Mr. Dyce -- well, let me ask you this. What
18 work had you done to try to get to the bottom of things before
19 Mr. Dyce came back from Arizona?

20 A As I stated earlier, we took all the receiver reports for
21 that quarter against our inventory records to make sure that
22 they were received properly.

23 Q When you say "we," who do you mean?

24 A Figure of speech. Me. I.

25 Q Yeah. And didn't Mrs. Dyce help you in that very

1 exercise?

2 A She was involved in the inventory.

3 Q Well, so she doesn't go to Arizona with Mr. Dyce?

4 A Yes, she did.

5 Q Well, so how could --

6 A Later.

7 Q -- she be helping --

8 A After. After. She came back when the reconciliation was
9 being verified.

10 Q Now do you remember that, or are you just sort of kind
11 of --

12 A No, I remember --

13 Q -- telling us now?

14 A No, I remember that both she and Jeanette were involved
15 in our quarterly inventory reviews.

16 Q And that was Jeanette Whaley, the wife of the other
17 then-partner in the business, correct?

18 A Yes.

19 Q Well, how long a period of time went by between you
20 discovering the discrepancy and Mr. Dyce, presumably with
21 Mrs. Dyce, coming back from Arizona?

22 A It was probably a matter of a few days, the first part of
23 April.

24 Q All right. And his reaction was, "I'll have my wife help
25 you figure it out"?

1 A No.

2 Q Well, that's all that happened. You sat down with
3 Mrs. Dyce and Mrs. Whaley and went through paperwork.

4 A I gave it to Quentin Dyce. Told him what we had did to
5 verify the discrepancy, and he had, as he would have, someone
6 verify that what I had done is right. I mean, I'm not
7 infallible.

8 Q No, I understand. That was Mrs. Dyce and Mrs. Whaley?

9 A Yes.

10 Q Did he ask you about any -- well, let me ask you this.
11 Did you do any other investigatory steps besides look at the
12 purchase records and the customer sales records between the
13 time you discovered the discrepancy and Mr. and Mrs. Dyce came
14 back from Arizona?

15 A No.

16 Q All right. But you were upset, yourself, during this
17 period of time, right?

18 A I was concerned, yes.

19 Q Were you panicked?

20 A No.

21 Q No. You were okay.

22 Did you go out and say, "Hey, Bender, Hutchinson, Colver,
23 Mr. Dyce is going to be back in a couple days. We've got to
24 try to figure this out. Let's work together. Let's try to
25 figure this out." Did you do anything even remotely like

1 that?

2 A We reviewed the amounts of the material.

3 Q Mr. Colver came in and helped you with the paperwork?

4 A I don't recall him specifically.

5 Q Well, who do you -- you just told me --

6 A Dick Bender.

7 Q Dick Bender helped you look at the paperwork?

8 A Which paperwork are you talking about, referring to?

9 Q The customer records for sales.

10 A Oh, no. No.

11 Q All right. So did you interview, for example, Mr. Colver
12 to see if he had any information that would shed some light on
13 what happened, perhaps to get to the bottom of it before you
14 had to break the bad news to Mr. Dyce and Mrs. Dyce?

15 A No, no.

16 Q No. And you didn't interview Dick Bender, either, did
17 you?

18 A No.

19 Q And you didn't talk to Monte Naff about it, either, did
20 you?

21 A No.

22 Q And you didn't talk to Mr. Hutchinson about it, either,
23 did you?

24 A No.

25 Q So there was this momentous inventory shortage,

1 unprecedented in your time at Dyce, never before, never since.
2 The clock is ticking. Mr. Dyce is coming back from Arizona.
3 So you looked at the sales records in and the sales records
4 out and threw up your hands and said, "That's all I can do.
5 I'll wait until Mr. Dyce comes home, and I'll tell him,"
6 right?

7 A Yes.

8 Q And he got mad. Fair statement?

9 A Yes.

10 Q And he took the project over, along with Mrs. Whaley and
11 Mrs. Dyce?

12 A They reviewed the paperwork that I had gave them.

13 Q Did you help them? Did you sit in a conference room or
14 an office with them and go through things?

15 A I don't recall.

16 Q Do you recall having any discussions with Mrs. Dyce while
17 she was going through the records about how her husband was
18 taking things?

19 A I don't recall it, no.

20 Q Do you recall -- can you visualize, in your head,
21 Mrs. Dyce leafing through paperwork in some office in the main
22 building, trying to get to the bottom of this?

23 A No.

24 Q Did Mr. Dyce ever have a followup conversation with you
25 regarding the work that either he did or others did besides

1 yourself in trying to get to the bottom of things?

2 A No.

3 Q And you continued on the order desk, taking orders,
4 buying supply, obviously, and he never said another word about
5 this to you at all ever?

6 A Not that I recall. Just that initial, "We'll get out of
7 the business," comment.

8 Q Well, you knew that was just a sort of remark in anger
9 and frustration? "Well, we're going to get out of the
10 business," and he stormed off, right?

11 A I didn't know that that was -- that was the first time in
12 my experience. I wasn't aware that this was a regular thing
13 for him.

14 Q Well, you had worked with the man. If you're right in
15 all these deductions you've made about timing and so forth,
16 you had been there a couple years. You had a feel for
17 Mr. Dyce. He was a full-time employee at his own place back
18 then, wasn't he?

19 A Yes.

20 Q All right. Well, did you think he was serious or not?

21 A Yes, I took him serious.

22 Q All right. About getting out of the business?

23 A Yes.

24 Q But other than that, he never got back to you with any
25 point of view or result regarding whatever looking into the

1 matter he did?

2 MR. BANKER: Objection, Your Honor. I think we've
3 heard this about five or seven times.

4 THE COURT: Right. Sustained.

5 BY MR. GROSSBART:

6 Q Now there had been other situations when product was lost
7 and Mr. Dyce, it was his standard procedure to write memos to
8 that effect, wasn't it?

9 A Occasionally.

10 Q Well, this was the biggest loss ever, right? Well, let's
11 put up -- sorry.

12 A In my experience.

13 MR. GROSSBART: Yeah. So let's put up Exhibit 72.
14 It's not objected to, 72.

15 DOCUMENT TECHNICIAN: (Complied with request.)

16 MR. GROSSBART: This is a memo dated --

17 THE COURT: Is it admitted?

18 MR. GROSSBART: I beg your pardon?

19 THE COURT: Is it admitted?

20 MR. GROSSBART: I thought he said no objection.

21 MR. MICKELSON: It's may-call.

22 MR. GROSSBART: It's may-call, no objection, on our
23 list.

24 MR. BANKER: No objection.

25 MR. GROSSBART: No objection. All right.

1 THE COURT: Seventy-two is admitted.

2 (Exhibit 72 was received in evidence.)

3 BY MR. GROSSBART:

4 Q Seventy-two. This is a memo dated November 4, 1975, sir.

5 Do you see that?

6 A Yes.

7 Q You are among the people who have been copied on the
8 memo. It says "Rod" on the left side there, does it not?

9 A Yes.

10 MR. GROSSBART: Would you highlight that, Neil?

11 DOCUMENT TECHNICIAN: (Complied with request.)

12 BY MR. GROSSBART:

13 Q And next to the "Rod," you crossed that out and put your
14 initials to signify that you read the memo?

15 A Correct.

16 Q All right. And in this memo, Mr. Dyce is expressing, I
17 think it's fair to say, concern about lost propylene glycol in
18 the amount of \$130 and change, something called caustic in the
19 neighborhood of \$891, *et cetera*.

20 And he concludes -- and, Neil, why don't you highlight
21 the last sentence.

22 DOCUMENT TECHNICIAN: (Complied with request.)

23 BY MR. GROSSBART:

24 Q -- "If this continues, it will not be tolerated,"
25 *et cetera*. Do you see that?

1 A Yes, yes.

2 Q And he's talking about less value than perc involved in
3 your inventory shortage, is he not?

4 A Well, in the low-end scenario, yes.

5 Q In the low-end scenario.

6 A Or, excuse me, the high-end.

7 Q There is no memo like this with your shortage, right?

8 A No.

9 MR. GROSSBART: All right. If you'd go to
10 Exhibit 353? I believe it's not admitted. I believe there's
11 no objection. However, it's 353.

12 MR. MICKELSON: I have it as admitted.

13 MS. ENERSON: Admitted.

14 MR. MICKELSON: It's on there.

15 MR. GROSSBART: I stand corrected.

16 BY MR. GROSSBART:

17 Q Let's look. And this is -- now you weren't, you weren't
18 working in 1972 for Dyce, but this is a memo admitted into
19 evidence, and here Mr. Dyce is talking about losing 180 bags
20 of sodium fluoride. Do you see that?

21 MR. BANKER: Objection, Your Honor. Relevance.

22 THE COURT: Sustained. Getting kind of cumulative,
23 too.

24 BY MR. GROSSBART:

25 Q How did you calculate -- you told us earlier that after

1 you had the conversation with Mr. Mielenhausen, you calculated
2 the 250 or deduced the 250- to 1,000-gallon range. Do you
3 recall that testimony a few moments ago?

4 A Yes.

5 Q Could you describe the process you went through to come
6 up with that range?

7 A Well, he asked me if I specifically remembered the
8 amount, and I said, "No, I do not specifically." And I
9 believe in the deposition is where the actual gallons came
10 out.

11 Q Well, it did come out, but you had formed that deduction
12 before you sat down for your deposition, had you not?

13 A I thought about it.

14 Q And actually, as you think about it, and have thought
15 about it since, it actually could be less than 250 gallons,
16 could it not?

17 A No.

18 Q No? And do you have the second transcript that I gave
19 you in front of you?

20 A Yes.

21 Q Page 604. Excuse me, 603, line 25. Are you with me,
22 sir?

23 A Yes.

24 Q You, do you recall, after being sworn to tell the truth,
25 being asked this question and giving this answer:

1 Question, "All right. And could it have been, based upon
2 the quality of your memory, as small as 25 or 50 gallons?"

3 "No."

4 "Could it have been a hundred?"

5 "Yes."

6 "All right. Could it have been 75?"

7 "No."

8 "All right. How about 87 1/2?"

9 "Could have been, yes."

10 Do you recall hearing those questions and giving those
11 answers?

12 A Yes.

13 Q And do you now reject that prior testimony?

14 A Yes.

15 Q Okay. And you've thought about it yet some more, and --

16 A I don't -- after having read the thing you're talking
17 about here, I had no idea where that came from. I get
18 nervous. I don't know.

19 Q All right. You were just nervous when you said that?

20 A Yes.

21 Q There was a fairly, I don't want to call it complicated,
22 but involved procedure for the delivery of perc to the Dyce
23 site in the 1970s where the trucks are weighed and reweighed
24 and so forth. Do you recall that generally?

25 A Yes.

1 Q And when a delivery truck from a perc manufacturer, one
2 of your suppliers, was due to make a delivery, they would show
3 up on site in Billings, right?

4 A Yes.

5 Q And they were then told to go to a truck weigh station
6 about a mile and a half away to have their truck weighed --

7 A Yes.

8 Q -- right?

9 And then they would come back with a weigh ticket that
10 says how much the truck and everything in it weighs?

11 A Yes.

12 Q Some very large amount of weight, obviously, right?

13 A Yes.

14 Q And then perc would be offloaded into either the bulk
15 tank or barrels or both?

16 A Yes.

17 Q And then the truck would be sent back to this weigh
18 station, right?

19 A Yes.

20 Q They would get another ticket? Right?

21 A Yes.

22 Q Come back to Dyce Billings?

23 A Yes.

24 Q And you would have a before and after weigh ticket that
25 you could do simple math, come up with the amount of pounds

1 difference between those two tickets, and, from that, figure
2 out how much perc was, in fact, purchased.

3 A Yes.

4 Q All right. And perc weighs about 13 1/2 pounds a gallon.
5 It was actually priced by the pound, so you multiply the
6 pounds times the price, and you have it, right?

7 A Yes.

8 Q So if something happened in the offloading of a truck by
9 way of some catastrophic release, not only would that make the
10 truck lighter, but the truck driver would still have to go to
11 the weigh station, come back, and then come back to Dyce with
12 the later weight ticket while the perc had just spilled a
13 minute ago, basically.

14 Do you understand what I'm saying?

15 A Yes.

16 Q That sounds preposterous to you, doesn't it?

17 A (No response.)

18 Q I'll withdraw it.

19 Did you look at these weigh tickets and do any
20 reconciliation work?

21 A Yes.

22 Q That was part of the work you did?

23 A Yes.

24 Q And you saw no irregularities there?

25 A No.

1 Q Well, you normally bought 3,000 or 4,000 gallons at a
2 time, right?

3 A Yes.

4 Q If a weigh ticket came back with a 5,000 -- excuse me, a
5 5,000-gallon difference, or that much in poundage difference,
6 it would stand out, wouldn't it? You'd say, "Wait a second.
7 I get 3,000 gallons every quarter. That weighs 13.5 pounds,
8 so that's about, you know, 39, 40,000 pounds. How could you
9 come back here with a weigh ticket that says, 'Oh,
10 50,000 pounds?'" It would stand out right there on that day,
11 wouldn't it?

12 MR. BANKER: Objection, Your Honor. Is there a
13 question here?

14 MR. GROSSBART: That's the question.

15 BY MR. GROSSBART:

16 Q It would stand out on that day.

17 THE COURT: It's argumentative, I think.

18 MR. BANKER: And argumentative.

19 THE COURT: Sustained.

20 BY MR. GROSSBART:

21 Q You're used to a standard amount of poundage every
22 quarter because you have a routine, quarterly delivery system.

23 A Yes.

24 Q All right. And had you seen a weight difference between
25 two tickets that was out of the ordinary, you would expect, in

1 the ordinary course, that somebody would have noticed it that
2 day?

3 A Yes.

4 Q And during the quarter in question, whatever quarter that
5 may be, I take it no one did -- no one noticed such an oddity?

6 A No.

7 Q Who is the person who would look at the weigh tickets,
8 the before and after weigh tickets? Whose job was that?

9 A Dick Bender would get the before and after. He would do
10 the receive and report paperwork. Submit it. And I had it.
11 I would get it, and then I would hold that until the bill came
12 to approve the payment of the invoice.

13 Q And when you did your reconciliation work, you said you
14 looked at all these weigh tickets?

15 A Yes.

16 Q And none of them stood out as out of the ordinary?

17 A No.

18 Q Pretty much the same every quarter, right?

19 A Yes.

20 Q Now I think you said on direct examination that you
21 looked into the issue of whether perc had been stolen, and you
22 ruled it out, or what did you do about checking into theft?

23 A We considered it, but we ruled it out just because the
24 forklifts are inside. I mean, I don't know a guy that could
25 put a 700-pound drum into a pickup, but there may be some.

1 Q Well, you keep saying "we." Who considered it?

2 A I did.

3 Q By yourself?

4 A Yes.

5 Q All right. Do you have the transcript in front of you,
6 the first, the earlier-dated transcript dated May 17, 2005?

7 A Okay.

8 Q Almost five years ago.

9 A Okay.

10 Q On page 99, do you recall, beginning at line 8, being
11 asked this question and giving this answer:

12 Question, "Okay. Was any investigation done back in 1975
13 or 1976 with respect to the discrepancy into whether perc had
14 been stolen from the premises?"

15 Answer, "Not that I know of."

16 Do you recall hearing that question and giving that
17 answer?

18 A Yes.

19 Q Did you consider whether, in keeping track of things,
20 that -- did you consider whether there had been some
21 intercompany transfer or sale that was missed in the
22 paperwork, if I can phrase it that way?

23 A Yes. We had -- all of our sales were tracked by
24 paperwork that we had file copies of to make sure we got all
25 of the bills back that were sent out.

1 Q And by "intercompany transfers," what I mean is -- did
2 you understand my question?

3 A No. I'm sorry.

4 Q No. Okay.

5 Did you consider whether or not there was an
6 unaccounted-for intercompany transfer that could account for
7 the shortage? And by "intercompany transfer," I mean a
8 transfer from Dyce Billings to another Dyce plant someplace
9 else? Dyce had other plants, right?

10 A Not at that time, but I opened the plant in North Dakota
11 in 1980.

12 Q What town was that in?

13 A Dickinson.

14 Q Wasn't there a plant in Williston, North Dakota as early
15 as 1974?

16 A That was a bulk tank farm only. It had no warehouse.

17 Q No perc there?

18 A No.

19 Q All right. So there was no issue of intercompany
20 transfers at this given point in time?

21 A No.

22 Q Now you said on direct that you were aware that the EPA
23 and the Montana Department of Environmental Quality were doing
24 an investigation that included the possibility of
25 contamination emanating from Dyce's plant. Do you recall that

1 generally?

2 A Yes.

3 Q And your best friend at the time, at least within the
4 company, was Dave Warne; is that right?

5 A Yes.

6 Q And he was in Billings --

7 A Yes.

8 Q -- at that time, right?

9 And he was one of the senior management people on site?

10 A Yes.

11 Q And Mr. Warne, given your personal friendship, was an
12 individual who you spoke with not infrequently; isn't that
13 right?

14 A Correct.

15 Q And you had conversations with him about the EPA's
16 investigation from time to time; isn't that right?

17 A Limited number of times.

18 Q Well, and you also exchanged e-mails with him from time
19 to time; isn't that right?

20 A Yes.

21 Q And same thing with Suzanne Miller, who was also in
22 management at the time; isn't that right?

23 A Same thing in what?

24 Q I'm sorry. You also had communications with Suzanne
25 Miller about the EPA investigation; isn't that right?

1 A I don't recall it specifically.

2 MR. GROSSBART: All right. Is 4087 in evidence? I
3 would like you to put that up, and we'll check to see if it's
4 been admitted.

5 MS. ENERSON: Not admitted, but no objection.

6 MR. GROSSBART: It's not been admitted, but there's
7 been no objection, Your Honor.

8 MR. BANKER: No objection.

9 THE COURT: 4087 is admitted.

10 (Exhibit 4087 was received in evidence.).

11 BY MR. GROSSBART:

12 Q All right. Do you have 4087 in front of you,
13 Mr. Hallsten?

14 A Yes.

15 Q And this is an e-mail from you to Dave Warne dated --
16 it's really tough to read, but if you go -- Neil, scroll back
17 up.

18 DOCUMENT TECHNICIAN: (Complied with request.)

19 MR. GROSSBART: Hang on. Would you highlight the
20 to, the from, the date line?

21 DOCUMENT TECHNICIAN: (Complied with request.)

22 BY MR. GROSSBART:

23 Q And that says it's from you to Dave Warne. Subject
24 matter, Montana DEQ visit January 6, 1999, right?

25 A Yes.

1 Q And that followed a conversation, a period of time in
2 which you were communicating with Mr. Warne about the MDEQ and
3 EPA investigation, right?

4 A Yes.

5 Q And you're specifically talking about chlorinated
6 solvents in the text of the e-mail, right?

7 A Yes.

8 MR. BANKER: Objection, Your Honor. I'm not sure
9 what the relevance is of asking this witness about this
10 document.

11 MR. GROSSBART: Your Honor, he talked about, on
12 direct, his involvement in EPA investigations.

13 THE COURT: It's overruled. Go ahead.

14 BY MR. GROSSBART:

15 Q In any event, your e-mail says it doesn't appear -- why
16 don't you just highlight the whole e-mail, Neil.

17 DOCUMENT TECHNICIAN: (Complied with request.)

18 BY MR. GROSSBART:

19 Q You say, "The only recollection I have of chlorinated
20 solvents in Lockwood is Beall Tankers, the Exxon Refinery,"
21 and nowhere do you discuss your recollection of a perc
22 inventory shortage.

23 A Well, he was asking about who else in the area would have
24 had the inventory.

25 Q All right. Perc is a chlorinated solvent, right?

1 A Yes.

2 Q All right. Well, and you also tell Mr. Warne in this
3 e-mail that you don't, quote, "I don't know that we would want
4 to volunteer much information," et cetera. Do you see that?

5 A Yes.

6 Q And what were you advising Mr. Warne not to volunteer?

7 A I was concerned that he would get our customers in
8 trouble.

9 Q Well --

10 A Stupid.

11 Q An investigation is a search for the truth. I mean, so
12 you thought -- you were telling Mr. Warne not to rat out the
13 customers? I don't quite understand what you're saying.

14 A Yeah. I was concerned that they would get into trouble,
15 but . . .

16 Q Now I think in response to a question on direct -- you
17 can take that down.

18 DOCUMENT TECHNICIAN: (Complied with request.)

19 BY MR. GROSSBART:

20 Q On direct examination, you ruled out '75 because you
21 don't think there was a perc tank, a bulk perc tank in 1975?

22 A Yes.

23 Q Are you certain of that or --

24 A No.

25 Q So if there was a bulk tank for perc, 1,500 gallons or

1 thereabouts, in 1975, you'd have to switch the date back and
2 pick up that earlier time period, would you not?

3 A Apparently.

4 Q As a possibility?

5 A Yes.

6 Q How big a truck was the perc tank that typically
7 delivered in the '70s? How long?

8 A Forty-foot trailer.

9 Q Forty-foot trailer. Add, on top of that, the tractor?

10 A Yes.

11 Q So you might be looking at 50 feet altogether, a little
12 bit more, perhaps?

13 A Yeah. Yes.

14 Q You, I believe, told us on direct that you had no
15 information of any sort that in any way associates the
16 inventory discrepancy that we've heard about this afternoon to
17 any spill or release of perc, correct?

18 A Yes.

19 Q And you have no documents that anyplace chronicle or
20 refer or memorialize in any respect the inventory shortage,
21 right?

22 A That is correct.

23 Q Nothing exists?

24 A No.

25 MR. GROSSBART: I have nothing further.

1 THE COURT: Do you have some?

2 MR. DAVIS: I do, actually. Briefly?

3 THE COURT: Briefly. I don't want any old ground
4 plowed, replowed.

5 MR. DAVIS: Well, I am just -- from just one other
6 angle.

CROSS-EXAMINATION

8 BY MR. DAVIS:

9 Q Mr. Hallsten, you testified you discovered this 250- to
10 1,000-gallon shortage of perc, and you took it -- the one
11 person you took it to in the company was the boss, correct?

12 A Yes.

13 Q Quentin Dyce. You were concerned, were you not?

14 A Yes.

15 Q All right. You told him about it. The only thing you
16 recall, after you took this to him, was him saying, "We're
17 going to have to get out of the perc business"?

18 | A Yes.

19 Q And you never followed up, yourself, again, on it, did
20 you?

21 A No.

22 Q Weren't you the least bit curious about this huge goof-up
23 that happened on your watch?

24 A I did everything that I knew I could do.

25 Q That wasn't my question, sir. Weren't you the least bit

1 curious about this big goof-up?

2 A Yes, I was concerned.

3 Q But you didn't talk to anyone else about it ever again?

4 A Not that I recall.

5 THE COURT: Do you have some redirect?

6 MR. BANKER: Very briefly.

7 REDIRECT EXAMINATION

8 BY MR. BANKER:

9 Q Mr. Grossbart has asked you some questions about other
10 testimony that you've given, and we talked about, you know,
11 the 87 1/2-gallon estimate you gave at one point.

12 What is your best recollection, as you sit here today, of
13 the amount of perc that was involved in the inventory
14 discrepancy?

15 A It was greater than 250 gallons, less than 1,000.

16 Q Okay. And what is your best recollection, as you sit
17 here today, as to the time frame of that inventory
18 discrepancy?

19 A It was the '75 to '78 time frame.

20 MR. BANKER: Thank you.

21 THE COURT: All right. You can step down.

22 Ladies and gentlemen, we're going to take an evening
23 recess.

24 I give you the usual admonition. Don't talk amongst
25 yourselves. Don't talk to anybody about the case. Keep an

1 open mind until you've got this in the jury room for
2 deliberation.

3 We'll be in recess until 5 -- we're going to start
4 early.

5 We'll be in recess until 8:30 in the morning.

6 THE LAW CLERK: All rise.

7 (Proceedings were recessed at 16:47:05.)

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1 VOLUME 2 REPORTER'S CERTIFICATE

2 I, JoAnn Corson Bacheller, a Registered Diplomate
3 Reporter and Certified Realtime Reporter, certify that the
4 foregoing transcript is a true and correct record of the
5 proceedings given at the time and place hereinbefore
6 mentioned; that the proceedings were reported by me in machine
7 shorthand and thereafter reduced to typewriting using
8 computer-assisted transcription; that after being reduced to
9 typewriting, a certified copy of this transcript will be filed
10 electronically with the Court.

11 I further certify that I am not attorney for, nor
12 employed by, nor related to any of the parties or attorneys to
13 this action, nor financially interested in this action.

14 IN WITNESS WHEREOF, I have set my hand at Billings,
15 Montana this 27th day of April, 2010.

16

17 /s/ JoAnn Corson Bacheller

18 _____
19 JoAnn Corson Bacheller
20 United States Court Reporter
21
22
23
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25